S. HRG. 103-636

LEGISLATION RELATING TO ADJUDICATION, COMPENSATION COLA, AND OTHER MATTERS

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

MARCH 24, 1994

Printed for the use of the Committee on Veterans' Affairs

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MARCH 24, 1994

LEGISLATION RELATING TO ADJUDICATION, COMPENSATION COLA, AND OTHER MATTERS

THURSDAY, MARCH 24, 1994

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS
Washington, D.C.

The Committee met, pursuant to notice, at 2:30 p.m. in room SR–418, Russell Senate Office Building, Hon. John D. Rockefeller IV (Chairman of the Committee) presiding.

Present: Senators Rockefeller and Thurmond.

Also present (staff): Jim Gottlieb, Chief Counsel/Staff Director; John Moseman, Minority Staff Director/Chief Counsel; and John Tagami, staff representative for Senator Akaka.

Chairman ROCKEFELLER. Senator Thurmond, I think you may have some comments you want to make.

Senator THURMOND. Well, I just have a statement here, about 3 minutes. I've got another engagement.

Chairman ROCKEFELLER. Well, you go right ahead.

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Mr. Chairman, it's a pleasure to be here this afternoon to receive testimony on various legislative proposals. I join you and the members of the Committee on Veterans' Affairs in extending a warm welcome to Mr. Vogel, the Under Secretary for Benefits. I also welcome the other witnesses who will testify today. The work you do on behalf of your organizations and for all veterans is greatly appreciated.

I'm glad to see we have the Legion represented here, AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars. I'm also glad to welcome Mr. Frank here.

Mr. Chairman, as you are aware, the Veterans Benefit Administration must deal with a number of issues. A critical issue is the adjudication backlog. The number of claims for benefits pending in the system is growing and its processing time is increasing.

This trend will likely continue as more veterans enter the system. The claims backlog has reached alarming levels. The backlog is increasing in terms of the number of cases and in terms of time required for processing. It's time to devote the required resources, technology, and personnel to resolve this situation.

I have said many times before that the highest obligation of American citizenship is to defend this country in time of need. And

the highest obligation of this grateful Nation is to provide for those who have served their country in time of need. One of our obligations is to ensure that veterans' claims are processed and adjudicated in a timely and fair manner.

As a result of this hearing, we will be better informed about the legislation and other actions which will help the claims backlog problem. I look forward to working with members of this Committee and other interested parties in resolving this problem.

Mr. Chairman, S. 1927 will increase the rates of compensation paid to veterans with service-connected disabilities, and will also increase the rates of dependency and indemnity compensation paid to the survivors of certain service-disabled veterans. The rates would increase by the same percentage as the increase in Social Security and VA pension benefits.

The compensation COLA [cost-of-living adjustment] would become effective on December 1, 1994. It provides for a COLA for 1994 alone, and it is not an indexation bill.

Mr. Chairman, I am pleased that we are considering a clean COLA at this time. An early passage of this measure will allow VA to make the adjustments necessary to ensure that these benefits are received in a timely fashion.

Some may question why a COLA is being considered for veterans when the Congress has previously implemented so many pay and COLA freezes for others. Indeed, many of the veterans groups have testified regarding their willingness to sacrifice as long as all were treated fairly. S. 1927 meets this standard of fairness. It provides for a COLA equal to that granted to Social Security recipients; in other words, for 1995, Social Security and VA compensation would be linked. If Social Security is not frozen, VA compensation would not be frozen.

Mr. Chairman, I have another engagement, I've got to go. I want to thank you for your consideration and welcome all these good people here today. Thank you very much.

[The prepared statement of Senator Thurmond appears on page 33.]

Chairman ROCKEFELLER. Thank you, Senator Thurmond. You're always welcome under all conditions, and you can open and close all the hearings that you want to. You're the ultimate Chairman.

Senator THURMOND. Thank you very much, Mr. Chairman. You make a good Chairman.

Chairman ROCKEFELLER. And you've been here longer than my senior colleague has, isn't that right?

Senator THURMOND. I was here when your father-in-law was here. [Laughter.]

Chairman ROCKEFELLER. I have an absolutely brilliant opening statement, which I'm not going to give, so I'm giving myself permission to put it in the record.

[The prepared statement of Chairman Rockefeller appears on page 32.]

Chairman ROCKEFELLER. So, let's go right to our panel. We've got a difficult afternoon. We've got votes. In fact, we've got a vote that affects the VA to the tune of about $500 million, which I spent most

of the morning on the floor arguing against. I'm not feeling very good about the prospects right now, because people aren't focused on it properly. But in any event, we've got a difficult afternoon. Danny Akaka is going to be chairing part of this hearing, I'm going to be chairing part, and we're going to have votes going on.

So, let's go right to the first panel, which is John Vogel, accompanied by Charlie Cragin, who is Chairman of the Board of Veterans' Appeals; Jack Thompson, Assistant General Counsel; and Gary Hickman, Director of the Compensation and Pension Service. Of course, we welcome you all. John, I have your full statement here, and what I would like is for you not to give that statement; would you just tell me about not what you see that you like, but what you see that you don't like, and what you think we ought to be doing about it.

[The prepared statement of Mr. Vogel appears on page 34.]

STATEMENT OF JOHN VOGEL, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY CHARLES L. CRAGIN, CHAIRMAN, BOARD OF VETERANS' APPEALS; JOHN H. THOMPSON, ASSISTANT GENERAL COUNSEL; AND J. GARY HICKMAN, DIRECTOR, COMPENSATION AND PENSION SERVICE

Mr. VOGEL. You would just like me to go through the ones that we're—

Chairman ROCKEFELLER. No, I just asked you the first question. You just gave me your statement. I've got it right here.

Mr. VOGEL. Mr. Chairman, we're pleased to see a clean COLA bill. As far as some of the administrative provisions that would help us, or are intended to help us with the adjudication process are concerned, we were pleased to work with your staff on a couple of variations on those. By and large, we know where you're coming from. As a Chairman with such an abiding interest in helping us reduce the unacceptable length of time it takes to process compensation and pension claims and the amount of time it takes to get decisions from the board, we want to continue to work hand in glove with you and members of the Committee and the staff. I don't—

Chairman ROCKEFELLER. But John, that's not answering my question. I know that you have good will towards me, and I have good will towards you. The question is, what do we need to do? What have we got to do to fix this thing?

Mr. VOGEL. If I could have my wish, I would ask that you allow me to hold my 1995 staffing at the 1994 levels, and I promise you, we will reduce the unacceptable amount of time it takes to process claims. We would be down close to 100 days by the end of 1995. We are putting sufficient modernization initiatives into place. Computer enhancements are being installed in our regional offices as we speak.

Chairman ROCKEFELLER. Tell me why holding the personnel level at the current level, when it's taking up to 200 days to process an initial claim—why that same number of people brings you down to 100 days. That means you're going to do some things differently?

Mr. VOGEL. That's right, sir.

Chairman ROCKEFELLER. What are those things?

Mr. VOGEL. I mentioned some ADP [automated data processing] enhancements. They are labor-saving initiatives. They reduce much of the clerical work which is of little value to the decision process. That's number one.

Number 2, we must change our current process of handling claims. We are involved in a number of interesting pilot projects, one of which was recognized last week by Vice President Al Gore, a reinvention initiative in the NY Regional Office. We had mentioned that at a previous hearing, Mr. Chairman.

We're going to reengineer some of our work processes. We have been held back by some of the rules and regulations that we have built up over time in our administrative practices. They seemed to be wise and good at an earlier time but now seem to be inhibiting us. We're tearing some of those barriers down. And we've kept the number of pending compensation and pension cases at a consistent level for about 3 or 4 months. We're not cutting into the backlog much, and we have some offices in which the amount of time it takes is still high.

But we are now seeing reversals of that trend, especially in offices where we have piloted some new modes of operation. That, together with some ADP enhancements and continued training of our personnel, will relieve our backlog burden. I feel very optimistic.

Chairman ROCKEFELLER. Well, you feel optimistic, but I guess I don't yet. I don't think I have any reason to feel optimistic yet. One of the bills that we're working on proposes a comprehensive study by an outside entity. Your testimony raised some concern about the timeframe. I sense you're neutral about the study, but you would just as soon not have the comprehensive study.

Both you and I know that usually when someone says let's get a study of something, it means they are delaying it. But when you've got a problem this big affecting this many people, I think we need all the help we can get. If you're working on the inside and somebody's doing a study from the outside, trying to figure out what can be done, what is wrong with that?

Mr. VOGEL. Actually, Mr. Chairman, we think that your idea of a comprehensive study by the Administrative Conference of the United States is really an endorsement of the need identified by the Blue Ribbon Panel on Claims Processing. The panel recommended that an outside group take a look at our regulations, laws, and procedures to try to simplify them, because over time they have evolved into an unnecessarily complex system.

So I don't think we have any serious disagreement on this matter.

Chairman ROCKEFELLER. Well, what does that mean? In other words, we've got to work together on this thing.

Mr. VOGEL. We hadn't thought of the Administrative Congress of the United States, but we had been considering the American Bar Association. In any event, this kind of study should be done. I think it's good for an outsider who is not as invested in this as we are to conduct the sort of study proposed in S. 1908.

Chairman ROCKEFELLER. When you say in your testimony that you think the study would be "unnecessarily complex and comprehensive," what does "unnecessarily comprehensive" mean? But now you're

backing away from that, and you're willing to go ahead and support the study.

You explained at some point, too, that VA would be required to provide to the Administrative Conference some information that is not available. What is not available? I don't understand that.

Mr. VOGEL. The bill, as I recall it, would obligate us to gather data for the Administrative Conference before they began their study. This would cause us to review individual claims to extract the data. We could not do that in a reasonable time, and the procedure would interfere with adjudicating claims.

Mr. Hickman, do you have anything?

Mr. HICKMAN. Let me add something to that, Mr. Vogel. S. 1908 would require that we provide the number of claims decided on the basis of the evidence submitted with the original claim. We don't have a database that stores that type of information, and we would be required to take a look at claims folders. That would be one area in which we wouldn't have the required information available within the 90-day period.

Chairman ROCKEFELLER. Well, let's look at this thing whole cloth. We've got a gigantic problem, a gigantic problem. I think I've already used this example, but I remember when I was Governor of West Virginia—which is tiny compared to what you're facing—we had a workers comp problem. Our claims were being paid in an average of 77 days, which obviously wasn't doing anybody who was injured any good. I made it one of my pledges in my inaugural address to fix this. I said "We're going to get down to 4 days." And we did. But we did that because I sat on that process about half of every day, so to speak. We got it down to 4 days for awhile. We couldn't hold it there. It went back up to about 7 or 8 or something.

In other words, I gave myself over, I committed the resources that were necessary to get that done, because I decided I was going to get it done. I pledged that. I made four pledges in my inaugural address. That was one of them. And I did it.

Now, I feel more strongly about this than I did about that. So let me ask you in a different way; if you tell me that you can get this backlog down to an acceptable level—and I don't even know what an acceptable period of time is—I would be interested to know what you—

Mr. VOGEL. Over time, Mr. Chairman, we need to have—

Chairman ROCKEFELLER. Well, let me finish my question. In other words, what is an acceptable period of time? First, if you had all the resources, you could do whatever you wanted, what would be the acceptable period of time that you would try to get this backlog down to? And secondly, if you had any and all resources that you needed, what would you be asking for?

Mr. VOGEL. We think that 100 days or so, a little over 3 months, is a reasonable period of time to give a veteran a decision on a compensation claim. We complete some education and pension claims in 30 to 60 days. We think that about 100 days is reasonable for compensation claims.

We have specified that we would need a large number of people in our adjudication divisions to actually bring the backlog down with no

change in technology. If I could just hold onto the numbers we have today, we would turn the backlog around next year. If we could keep in 1995 our 1994 FTEE (full-time employee equivalent) levels, we could make a start, and by the end of 1995, we would reduce the average 210-day claims processing time. Some offices are running even higher. We would be on our way down to 150 days by the end of 1995.

You mentioned that when you were the Governor of West Virginia, you devoted additional resources to your problem.

Chairman ROCKEFELLER. Yes, and that's the question I'm asking you.

Mr. VOGEL. We—

Chairman ROCKEFELLER. Let me ask you, what's the state of the computerization?

Mr. VOGEL. Right now we are putting in our regional offices what we call stage I equipment. That essentially is a computer base that gives you the capacity to run additional work-enhancing software programs. Our current system right now is inadequate to allow us to put this software into place. By the end of this fiscal year, with a couple of exceptions, all stage I equipment will be in place. Right on the heels of that come a number of enhancements which are very labor-saving and will free up more of our people from clerical tasks to work on decisions on compensation and pension.

Following that, 1 year later, would come computer imaging and scanning, whereby we wouldn't be dealing with paper so much as we would be dealing with images of paper on a computer screen. Beginning at the end of this fiscal year and until about this time in 1995, we would install online access to the regulations, Court of Veterans Appeals decisions, and all the directives. We also will have an automated system to help in the rating activity. This system would help assure us that we don't miss steps in the process, that we don't fail to get evidence that we need or otherwise correctly process claims. It's cheaper than having remands from the Board of Veterans' Appeals and the Court.

We are bar-coding all our documents so we don't have to spend so much time just looking for paper. These initiatives go into place this year. We've been working at them for a long time, and we're now beginning to see the results of our efforts.

And our people need this type of help to keep their chins up. They've been beleaguered and seen no light at the end of the tunnel. They now can see it. They're working collaboratively, and we're doing some interesting and innovative things, freeing up the creativity of our workers in the regional offices.

Chairman ROCKEFELLER. So the net effect of what you're telling me, John, is that if you can stay where you are in FTE, you're OK?

Mr. VOGEL. Yes, if I can carry 1994's level into 1995, and then have the budgeted $25.5 million for stage III of computer automation, then we'll see some positive results and figures in 1995.

Chairman ROCKEFELLER. OK.

Mr. VOGEL. If I didn't believe that, I would still be the Director of Bay Pines VA Medical Center, and I would have tee time in about an

hour and a half, instead of being up here to work on this. I really do believe in this, Mr. Chairman.

Chairman ROCKEFELLER. Well, that's good, because it's going to take ravenous intensity to get this going in the direction that you want.

I'm glad to hear that the VA will correct its interpretation of the law concerning radiation claims. Your testimony states that this makes S. 1906, which would overrule *Combee*, unnecessary. John, while I am delighted that the Secretary has made this decision—frankly I always thought he would not agree with the Department's position—I am concerned that the officials who were responsible for the original incorrect rule will still be at VA long after Secretary Brown is gone. This is one of those situations when people get nervous about bureaucrats.

If the law is not changed to clarify Congress' intent, what would prevent a future Secretary from changing the policy back?

Mr. VOGEL. I think the active oversight of this Committee and the House Committee would see to it that we do not inappropriately modify a regulation intended to overcome a deficiency. We're going to put our regulation into place, and we believe it will satisfy your concern, Mr. Chairman.

Chairman ROCKEFELLER. But if we do it for you in law, doesn't that help you?

Mr. VOGEL. It doesn't hurt, but it would mirror what the Secretary has undertaken already, and it is likely that we will have the regulation in place before you have the law in place. But we can certainly—

Chairman ROCKEFELLER. When do you expect to issue this, and would it be retroactive, and if so, what would be the effective date?

Mr. VOGEL. I don't know about retroactivity. I would have to ask the General Counsel.

Mr. HICKMAN. I think we would have the regulation in place sometime this year, Mr. Chairman. I defer to Mr. Thompson on retroactivity.

Mr. THOMPSON. Well, I think the retroactivity decision has not yet been made, is the short answer.

Chairman ROCKEFELLER. What about the date?

Mr. HICKMAN. The date would be during this coming year, Mr. Chairman.

Chairman ROCKEFELLER. I missed it. During the—

Mr. HICKMAN. The date would be during this calendar year, given the necessity for receiving and responding to public comments.

Chairman ROCKEFELLER. Now, with respect to S. 1907, medical malpractice, and claims for section 1151 compensation, the Department of Veterans Affairs states that the regional offices have been directed to allow any claims that can be allowed under the invalid regulation. However, The American Legion states in its testimony that it receives a "daily flood" of inquiries from veterans whose section 1151 claims are now on hold at regional offices. PVA's testimony states that VA has only recently begun to adjudicate section 1151 claims in order to allow claims that meet the requirements of the former rule.

The Committee continues to receive information from veterans and veterans representatives that indicates that some regional offices are simply putting all section 1151 claims on hold. How are you monitoring the implementation of this directive to regional offices, and is any of that true?

Mr. VOGEL. If The American Legion is getting a flood of complaint letters, they haven't given me a drop. I think it's likely that when such a claim hits the desk, somebody says, "That's an 1151 claim, those are on hold, and we're not looking at them." Last week, we issued a directive that said, "You will adjudicate and allow all 1151 cases that can be allowed."

If we have offices that are not doing this, and if somebody would share that with me, we can correct them. I don't know of any myself. It wouldn't surprise me if we didn't have some incorrectly laid aside. We think we're on the way to fixing that. The word is out now.

Chairman ROCKEFELLER. The "word out" being what?

Mr. VOGEL. Adjudicate those you can allow.

Chairman ROCKEFELLER. Is that a directive, is that in print?

Mr. VOGEL. Yes, sir. That's a directive.

Chairman ROCKEFELLER. When did this go out?

Mr. VOGEL. Last week, sir. It's not the first time we've put such a directive out. But we issued a reminder last week. And we can monitor whether the regional offices are adhering to that directive.

Chairman ROCKEFELLER. I hope you understand our interest in pursuing that.

Mr. VOGEL. Absolutely, Mr. Chairman.

Chairman ROCKEFELLER. Mustard gas compensation. Now, this isn't on the agenda for today, but it relates to an issue of great concern to me. On January 24 of this year, the VA announced that it would add to the list of conditions that would be compensated based on exposure to mustard gas and lewisite. The proposed rule followed a decision made last year to compensate for these additional conditions. In recent weeks, we have heard from veterans who were exposed to mustard gas and have conditions that will be added to the list, such as laryngeal cancer. We've heard from them.

They are extremely frustrated because their claims have not yet been adjudicated. These veterans participated in the mustard gas tests in the service of their country, without question, without any protest. They were sworn to secrecy about those tests for more than 40 years. Now, not surprisingly, they feel forsaken. The Government finally told them they might be entitled to compensation, but the process drags on. What's happening?

Mr. HICKMAN. Mr. Chairman, that proposed regulation has been published in the Federal Register, but we're required to wait 60 days for public comment. When the 60 days have elapsed, we will begin work on a final rule after reviewing any comments. If there are no comments, probably the final rule will go as proposed, and we will then be able to adjudicate those claims.

Chairman ROCKEFELLER. So what timeframe are we talking about?

Mr. HICKMAN. We're talking March, when the elapsed period of time will—

Chairman ROCKEFELLER. So the 60 days is running?

Mr. HICKMAN. It is almost over, and we'll probably be able to go forth with the final rule in April.

Chairman ROCKEFELLER. OK, and am I correct that under current law, VA can provide these veterans with medical care for the conditions that they are trying to have considered service connected?

Mr. VOGEL. I don't know the answer to that, Mr. Chairman. My thought is that until they are adjudicated to be service connected, the medical centers may treat them. In other words, it is discretionary with the VA medical centers to treat them or not, according to the availability of medical resources.

One of the things that we are looking forward to with the reform of health care is avoiding the situation where a nonservice-connected condition can only be treated on inpatient status. We look forward to the day when we can treat all veterans on an outpatient or inpatient basis, whether they are service connected or not.

Chairman ROCKEFELLER. I might say to the veterans service organizations in the room, there is a vote that will take place that I spent 2 hours battling against this morning; it will take place probably any minute here. It would cut an additional $500 million from VA, and it would affect indigent, older, Medicaid veterans, mostly in long-term care facilities. It would affect them not this year or the next year, but in the out years, 1999 and on. I would advise you to look at the vote count. I'm not talking to you, John, I'm talking to the folks behind you. Just look at the vote count on that. I got angry about it this morning, so that's simply why I'm saying that.

"Senator" Moseman, do you have any questions?

Mr. MOSEMAN. I do have one; actually, I have two.

Chairman ROCKEFELLER. Go right ahead.

Mr. MOSEMAN. Mr. Vogel, I'm a little concerned about your request or your desire to maintain the staffing levels you have this year into next year. The Administration's budget proposes a cut of 622 people from your organization. How do you square the budget with your desire?

Mr. VOGEL. When the budget was presented by the Secretary to this Committee, he said that it was not a great budget. It isn't. Nowhere in that budget is it stated that the Veterans Benefits Administration will be able to improve its performance on compensation and pension claims based on the numbers in that budget.

Mr. MOSEMAN. Well, are there ways that you're going to be able to keep your people? I guess that's my question. You're faced with a 622-person cut based on the budget. Are there other things that you're trying to do to prevent that from happening that we should know about?

Mr. VOGEL. It's in the hands of this Committee and the Committee on Appropriations and Budget. We're taking steps on the administrative side to try to improve the performance of those we have now. Six hundred twenty-two FTEE doesn't sound like a lot to some, but that's about 250 percent higher than our normal annual attrition rate. And we're waiting to see whether we will have buyout legislation. Otherwise, we cannot get that number down without taking some really undesirable actions, like a reduction in force.

Mr. MOSEMAN. In terms of S. 1905, one of the adjudication bills, I notice that the VA opposes the requirement that outside physician opinions be used in relation to compensation claims. Do I assume that you're worried about veterans shopping for favorable physicians and the VA being forced to accept those opinions?

Mr. VOGEL. We accept such opinions, but we weigh them against all other evidence of record. S. 1905 seems to require us to accept private physician statements over all other evidence, and that's what we really don't like.

Mr. MOSEMAN. Under current COVA [Court of Veterans Appeals] opinions, though, if a veteran presents a compensation claim based on an outside physician's opinion, you still have to accept that, don't you?

Mr. VOGEL. We do indeed, yes.

Mr. CRAGIN. We have to evaluate it as part of the body of evidence, but not to mandatorily provide it any preferential treatment. I think that's Mr. Vogel's concern.

Mr. MOSEMAN. Thank you. We'll have other questions for the record.

Chairman ROCKEFELLER. OK. John and all of you, I thank you very much. This was a little crisper than usual, but we've got this busy afternoon. I thank you very, very much, all of you.

Mr. VOGEL. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Our next panel includes representatives from The American Legion, AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and Veterans of Foreign Wars. Gentlemen, if you could take your seats, we would be grateful.

Carroll, shall we begin with you, sir?

Mr. WILLIAMS. Yes, sir.

STATEMENTS OF CARROLL WILLIAMS, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; MICHAEL F. BRINCK, NATIONAL LEGISLATIVE DIRECTOR, AMVETS; RICHARD F. SCHULTZ, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; AND BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

[The prepared statement of Mr. Brinck appears on page 46; Mr. Schultz on page 48; Mr. Mank on page 53; and Mr. Manhan on page 57.]

Mr. WILLIAMS. Mr. Chairman, The American Legion appreciates the opportunity to testify before the Senate Committee on Veterans' Affairs and to briefly comment on the proposed legislation on a variety of issues. We wish to commend this Committee on the scheduling of this timely hearing on the current crisis in VA's claims adjudication and appeals process. In particular, S. 1904 proposes several amendments to the statute—specifically, title 38, United States Code, chapter 71—for the purpose of improving the organization and procedures of the Board of Veterans' Appeals. The American

Legion has no objections to these proposed amendments. The American Legion has expressed support for a similar bill in testimony last year, and in February of this year before the House Committee on Veterans' Affairs.

In the interim, the backlog of appeals pending at the board has continued to grow at an alarming rate. Currently, there are in excess of 40,000 claims physically at the BVA. In addition, the board's response time, as of the end of February, is projected to be 685 days—1 year and 11 months. We believe this constitutes a very real crisis by anyone's definitions or standards.

Although this is an operational crisis for the board, most importantly, it is a personal crisis for veterans who are waiting, who are forced to wait for years for a decision. The American Legion's network of service offices receives hundreds of calls daily from disgruntled veterans seeking to know the status of their pending appeals and questioning our service officers as to why it takes the board so long to render final decisions on their appeals. The American Legion believes that the enactment of these measures will allow the board to begin the slow process of reducing the backlog of pending cases and improving its response time.

S. 1905 includes several proposals to change and improve the claims process at VA's 59 regional offices. The measure would amend title 38, United States Code, section 1506, to require that a pension recipient notify VA when there is a material change in their annual income, instead of filing annual income reports. The measure would authorize VA to accept a written statement of a claimant as proof of the existence of a marriage, dissolution of a marriage, birth of a child, or death of a family member, in a claim for VA benefits.

The bill would authorize VA to accept medical reports from a private physician in support of a claim for disability compensation or pension benefits. It would also require that not later than 90 days after the enactment, the Secretary of Veterans Affairs is to report to the congressional Committees on Veterans' Affairs on the status of an agreement between VA and the Department of Defense.

Chairman ROCKEFELLER. Carroll, I don't want to interrupt you, but I obviously am. I apologize.

Mr. WILLIAMS. Yes, sir.

Chairman ROCKEFELLER. As I understand it, The American Legion doesn't take any position on the home loan situation.

Mr. WILLIAMS. We did, Mr. Chairman.

Chairman ROCKEFELLER. Did you?

Mr. WILLIAMS. Yes, sir.

Chairman ROCKEFELLER. Can you clear that up for me?

Mr. WILLIAMS. Well, basically, what we recommend is that the proposed legislation is OK from our perspective, as long as it does not further restrict or eliminate the veterans' restoration to VA home loan guaranty entitlement after, say, a natural disaster or fire should occur to destroy the home. So what we're asking is that this particular provision include full restoration of the veteran's eligibility to home loan guaranty. That is our position.

Chairman ROCKEFELLER. Under those circumstances?

Mr. WILLIAMS. Yes, sir.

Chairman ROCKEFELLER. OK.

Mr. WILLIAMS. Strictly those circumstances.

Chairman ROCKEFELLER. OK, and I apologize.

Mr. WILLIAMS. Do you want me to continue?

Chairman ROCKEFELLER. Yes, and let me also apologize, because I talked about service organizations and didn't give anybody's name, which is not exactly polite, so I apologize for that. And again, I remind you we've got this weird afternoon. It's not weird so far, because there haven't been any votes. At 3:15 we have five consecutive votes. That means we're going to be sitting there for 60 minutes, right? It's a 20-minute vote and then four 10-minute votes. I mean, it's absolutely ridiculous.

Mr. WILLIAMS. In the interest of brevity, Mr. Chairman, I would just like to make reference to the VA's Blue Ribbon Panel on Claims Processing, which recommended to the Chairman that a number of proposals be initiated and carried out by VA to improve the claims adjudication processing at the regional offices, in an effort to ensure the quality of its decision and to improve its timeliness in rendering decisions on veterans' claims. The American Legion, as you know, took part in VA's blue ribbon panel, and we support the implementation of the recommendations of the panel to help alleviate the present crisis for VA and for veterans.

Primarily, in conclusion, The American Legion has been very concerned by the growing backlog of cases pending in the regional offices and the Board of Veterans' Appeals. We receive numerous calls from veterans around the Nation inquiring as to why it's taking so long for the VA to render final decisions on their claims. We believe that the implementation of the panel's recommendation will over time help improve the timeliness and quality of the decisions on VA claims and reduce the backlog of pending claims.

Mr. Chairman, that concludes my testimony.

[The prepared statement of Mr. Williams appears at page 41.]

Chairman ROCKEFELLER. Well, I'm grateful to you. Thank you.

Russell, can I go right ahead and ask you a question before this bell goes off? Because I think when this bell goes off, we're going to have Chairman Gottlieb and Moseman here. Senator Akaka and I are going to be sitting over on the floor for an hour.

Russell, can I ask you why PVA opposes single-member decision-making?

Mr. MANK. Yes, sir. We believe three persons provide a better balance to a board. You have a physician and two other people. It gives the veteran an opportunity to present information to three members which a single person might miss.

We're opposed to S. 1904, in its current version, because it gives the BVA chairman the opportunity to appoint an unlimited number of temporary members. That temporary member in this particular bill has no particular criteria. It can virtually be anyone. And we're concerned that that individual may have final authority on a veteran's claim since 85 percent of all claims are approved at the regional or BVA level. And that one person then may judge a person's claim erroneously, whether it be at the regional level or the BVA level.

Chairman ROCKEFELLER. Yes, I hear that now. Now, what I would like to have is the others of you reflect on that statement, because this is a very interesting question; I think it's very important because it has to do with efficiencies. You're suggesting it might lack balance. The others of you, I would be interested in your opinions, please.

Mr. MANK. Sir, could I add one more thing? The best figure that we have heard over the last year is that at the BVA level, the claims improvement would be 27 percent.

Chairman ROCKEFELLER. Twenty-seven percent with what?

Mr. MANK. Going from a three-person to one-person boards.

Chairman ROCKEFELLER. Three to one. And you're worried that within the 27 percent, there may be some error.

Mr. MANK. Yes, sir. My question is, if you're using three-member boards now and you go to one-person boards, why doesn't the rate go up to 66 percent?

Chairman ROCKEFELLER. Maybe it will.

Mr. MANK. Well, we have heard no prediction coming close to that.

Chairman ROCKEFELLER. I understand that.

Mr. MANK. That's all I have, sir.

Chairman ROCKEFELLER. You're concerned that maybe somebody didn't sleep last night or they fought with their spouse or something of that sort, and you just catch a wrong person on a wrong day?

Mr. MANK. Oh, no, sir. I think what it is is you have three people reviewing a claim folder. That would provide balance when they adjudicate it. Whereas one person looking at it may miss something, and that may be to the benefit of the veteran.

Chairman ROCKEFELLER. Could I hear some discussion of this? This is very important.

Mr. WILLIAMS. Well, The American Legion supports the single-member decisionmaking process at the BVA. It will increase the timeliness factor from 25 to 27 percent. But the key factor is that it would help reduce the level of cases that are pending before the BVA. And in addition, I'll make this one final comment: If we perceive that the one member may have committed some type of obvious error in a decision, we have the option of requesting through the chairman's office a reconsideration.

Mr. BRINCK. AMVETS would support the single-member board, despite the difference between 66 and 27. I think we all understand that with a three-member board these days, everybody doesn't read the whole file. It's generally led by one person with consultation with the other two members. Correct me if I'm wrong, but it may be almost a pro forma signoff. But so, and with the ability to ensure due process with review and reconsideration, we support single-member boards.

Mr. VIOLANTE. Mr. Chairman, DAV also supports the single-member decision. Having spent 5 years at the BVA, I know that it is not a deliberative process on all those cases. And while three members may sign it, as Mr. Brinck indicated, sometimes it is pro forma. And you also have the staff attorney who is writing the decision and a board member who's reviewing it. So it's not just one person's input into that decision.

Chairman ROCKEFELLER. That's interesting. So in other words, the three-member board isn't really the three-member board, it's three members working off of a staff workup and recommendation.

Mr. VIOLANTE. Yes.

Chairman ROCKEFELLER. Go ahead, Russell, this is very important stuff.

Mr. MANK. If I were sitting on an oversight committee right now, I would be terribly concerned just hearing those comments. Congress must have established three-member boards for some purpose. And here you've heard in public testimony that BVA is not using three-member boards. Does Congress give in to what's become practice versus what had been established?

Chairman ROCKEFELLER. What about the review factor, though, Russell?

Mr. MANK. PVA would be willing to have one-person boards at the Board of Veterans' Appeals for all cases remanded or rendered in favor of the veteran. But we would like the option, for the veteran whose case is denied, to be able to appeal it to a three-person panel or section.

Chairman ROCKEFELLER. Bob, have you got any comments from VFW?

Mr. MANHAN. The VFW has always supported the one-person panel. I worked at the BVA as a VFW caseworker, and I respectfully understand what Mr. Mank is saying. However, I disagree that a one-person board will overlook the one key factor that will throw a case into a denial category is a reasonable consideration by itself. The odds are rather slim that one fact by itself, if it is so important, would be missed by a seasoned BVA employee is not supported by the VFW.

But to build a system or to design a system that is 100 percent foolproof, with all the problems we have now, is just not worth the effort, Mr. Chairman. We support the one-person panel.

Chairman ROCKEFELLER. Can one of you or several of you describe to me the chemistry when these three people come together now and the way it works?

Mr. MANHAN. I think perhaps only someone who is assigned to the BVA could best do that. As I stated before, I worked at BVA as a VFW employee and therefore had no direct contact with the BVA internal system of case decisionmaking.

Chairman ROCKEFELLER. But you've done this, Joe?

Mr. MANHAN. For the veterans service organization. But we're separated, again, from the BVA staff. We may not work with them, in collusion with them. So I know I wouldn't touch that question, sir.

Chairman ROCKEFELLER. I wasn't trying to make it a controversial question, I was trying to learn a little bit.

Mr. VIOLANTE. Mr. Chairman, I did work for the BVA as a staff attorney writing those decisions. And while I spent 5 years there, my exposure was somewhat limited in having only been in two sections. There are 21 sections, and everyone operates a little bit differently. But for the most part, at least in the sections that I was involved in, there is a thorough review by one of the members. And sometimes, depending on the outcome or how it's written, the second member may get a little more indepth, but otherwise, it's just a review to

determine if he's satisfied with what's there on the tentative decision, whether the facts there would support the decision, either an allowance or denial.

So again, they're under numbers crunched, also. They have so many decisions to put out, and you don't get, in my estimation, a complete review by three people.

Chairman ROCKEFELLER. That's good to know. My bad news has arrived in the form of a single light on the clock behind you. So I would like to ask each of you this question, and Russ, we will start with you. This has to do with the study of the adjudication system. Your views, according to your testimony, vary amongst you. I'm interested in knowing if you're satisfied with the actions VA is taking internally to resolve the problems in the system, or whether you believe that an independent evaluation by some organization outside VA is needed or could be helpful.

Mr. MANK. Mr. Chairman, the PVA partially supported S. 1908. We believe that that study, over a broad period of 18 months, would provide some input from this outside body. But I would not want to have this board just resurrect old information that we already have. Our organization has made that pretty clear in our written statement. We would want to give them carte blanche to provide new information on how they could make this system much better. But yes, we support it.

Chairman ROCKEFELLER. Mr. Violante.

Mr. VIOLANTE. DAV does not support the study. I think we have indicated in our testimony that the VA now is undertaking a number of studies and has undertaken studies of the blue ribbon panel, for one. There is a task force that's being formed to look at the BVA and possible reorganization. We've witnessed firsthand what the regional office in New York City has done and how effective that has been. So we feel that right now is not the right time for an independent study. Let's give the VA the opportunity. And I think what Mr. Vogel had to say about keeping their employee levels up instead of cutting them will certainly be beneficial.

Chairman ROCKEFELLER. OK, Carroll?

Mr. WILLIAMS. Yes, Mr. Chairman. The American Legion supports any mandate for a comprehensive study of VA's adjudication and appeals process. However, we would just like to make one thing clear: We support it as long as that study does not eliminate or restrict veterans benefits. That is our policy on that particular request or that legislative endeavor.

Chairman ROCKEFELLER. It's interesting to me, actually, that there is variation on this. I would have guessed that there would have been agreement that way or this way, and there isn't. Mike?

Mr. BRINCK. I think in our testimony we supported the study, and having read the VFW's testimony, I realize I neglected to state one reservation. And I'll agree with their statement that we're not sure that ACUS, the Administrative Conference, is the one to do this, because of some of the past problems that the veterans organizations have perceived.

Chairman ROCKEFELLER. Tell me.

Mr. BRINCK. Well, let's see if I can remember here. There were, if I remember correctly, some problems with the administrative law judges, was it? I'll let him, if you will, I'll let him address that one, and I'll be happy to give you an answer in writing on the details.

[Mr. Brink's written response to the question appears on page 48.]

Chairman ROCKEFELLER. OK.

Mr. BRINCK. The only caution would be to avoid paralysis by analysis, I guess.

Chairman ROCKEFELLER. Yes, and I understand that. And in this town, that's the way this works. What I'm thinking is, when you've got something that is so huge that we've got to correct—

Mr. BRINCK. But an outside body is really the way to go. We've got all this internal stuff, and I'm sure that Mr. Vogel and company are going to do a good job with that.

Chairman ROCKEFELLER. To me it sets up a little competition, frankly. In other words, if there are two groups working, one doesn't want to come out looking less aggressive than the other. There is a little psychology at work there, it seems to me. Bob?

Mr. MANHAN. Thank you very much, Mr. Chairman. The VFW does not agree that an 18- to 24-month study conducted by the Administrative Conference of the United States is a good idea.

Chairman ROCKEFELLER. You do not agree?

Mr. MANHAN. No. We do not agree with S. 1908 simply because both VBA and BVA have been studied to death. They've got real problems regarding the quality of people and the quantity of people. ACUS can't help that. ACUS can merely tell us what we already know. That's the VFW rationale. And as said before, the ACUS study is projected so far in the future, what good will the recommendations really do?

But I will go back and suggest that the VBA-BVA problem is tied to other problems. Vice President Gore, in his performance review, has touched on the issue of streamlining the entire civil service system and the way it works and doesn't work. ACUS won't be able to solve this problem.

We don't support it, Mr. Chairman. I'll respond to any detailed questions you might have.

Chairman ROCKEFELLER. Well, you told me what you think and that's what the question is for.

I appreciate that, and I now have less than 10 minutes left on the first of five votes. I'm extremely—no, I'm not embarrassed about it, because one of them has to do with $500 million in the Department of Veterans Affairs, so I'm very anxious to be there. But I'm going to ask Jim and John to continue to handle this, and I will be back here if I can stop voting. I thank you all very much, and I apologize to all of you very much.

Mr. MOSEMAN. I have a question about S. 677, the bill to allow the VA or authorize the VA to essentially give to the Ronald McDonald House land, at Hines, for the purpose of constructing a Ronald McDonald House. Obviously, a noble purpose. I have two questions. They are intended to be direct. One, why should VA ever give away property without receiving any financial benefit, at a time when we are cutting budgets? And two, would the service organizations

continue to support this legislation if no veterans or their families could use the facility?

First question, why should we support giving away VA land?

Mr. BRINCK. I guess I'll jump in first. Obviously, if it was—I'll call it, for lack of a better term, a for-profit kind of an organization—we'd oppose giving anything away. The purpose of the Ronald McDonald organization, as you have stated, is sufficiently noble, I guess, to justify a change in what we would normally consider or want VA to do in terms of giving away property or anything like that. I don't know that that's an organization that's set up for veterans. It is to deal with, what, Loyola Hospital nearby? Yes, critically ill children. I would assume that if a veteran's family had one of those children being treated, they would be welcome there like anyone else. That's all we would ask.

Mr. MOSEMAN. Should we modify the legislation, Mike, to either mandate that, or somehow require that? It is a concern of mine, because we're talking about a VA facility, a facility with Loyola.

Mr. BRINCK. To have some kind of priority for a veteran's family? Sure, why not.

Mr. MOSEMAN. I frankly am concerned, we're obviously going to establish a precedent if this passes. There is a Gilda Radner House in NY, which has a tremendously noble purpose of dealing with women with cancer. There are all sorts of other nonprofit organizations, I think, as worthy as Ronald McDonald House. I'm just concerned about going down a road—

Mr. BRINCK. It would also depend on the facility. And I don't know Hines personally. But if Hines is a facility with 50 square feet left as opposed to 50 acres, that may make a difference. So that would have to be judged on a facility-by-facility basis.

Mr. MOSEMAN. Anybody else?

Mr. WILLIAMS. Yes, well, briefly, you threw a wrench in it when you said if the house was not made available for veterans and their families. We support this measure if it can be expanded to include a place for families of veterans who would like to stay in an inexpensive place while their loved ones, the veterans, are being treated at nearby Hines. The American Legion, as you know, has always been in the forefront as far as community endeavors are concerned. We could support it as long as certain provisions or a setaside is made for veterans and their families. So I hope I answered your question.

Mr. MOSEMAN. Thanks, Carroll.

Mr. TAGAMI. Carroll, let me interrupt your statement. I'm told by people who know more about this, and that includes probably everybody in the room, that the McDonald Foundation charter will not allow sharing agreements, i.e., only children would be allowed. Is that a correct statement? If that is the case, do you oppose or would you continue to support—those of you who are supporting—the giving of the property for this purpose?

Mr. WILLIAMS. I can't answer you at the moment.

Mr. TAGAMI. Maybe you could let us know afterwards. Because obviously, we're not going to able to change the McDonald Foundation.

Mr. WILLIAMS. It's for families of the children, not a McDonald House for children, specifically.

Mr. MOSEMAN. OK. Thanks.

Mr. BRINCK. If a veteran's family had a child being treated at Loyola Hospital, they certainly should be allowed access to the Ronald McDonald, and maybe on a priority basis in return. Now, I don't know if you call that sharing or whatever, maybe that's just being a good neighbor.

Mr. GOTTLIEB. It seems like something we should be able to work out.

Bob, talk to us a little more about why you oppose the study. Obviously, that's one of the areas where there is a small amount of controversy and where we have to decide how do we proceed. What are the studies that have recently been done looking at the system which you refer to? I'm familiar with the blue ribbon panel and what they've done. But specifically, the Chairman of the Board of Veterans' Appeals talks about the impact of judicial review on the board, etc., etc. I'm interested in what independent work has been done—not in the court, not in the board—to look at the process post-judicial review.

Mr. MANHAN. Thank you very much, Mr. Gottlieb. There have been two studies that I am aware of. One is called the Focus Group, which really addresses customer relations and customer satisfaction, as I understand it, regarding the product that BVA is turning out. The VFW, like all the veterans service groups and organizations, has had representatives on the Focus Group. And I understand that either yesterday or just some time today, Secretary Brown of the Department of Veterans Affairs appointed a select group to look at just the issues outlined in bill S. 1908.

Mr. GOTTLIEB. Timing is always interesting, isn't it?

Mr. MANHAN. Yes. Maybe we are now being overtaken by events. But having known that there was going to be another select group study, I don't know their formal title—however, that would preclude the ACUS requirement or need, in VFW's judgment.

Mr. GOTTLIEB. I think you're correct, I think it's select panel, adjudication or something. John, what is the name of the new group?

Mr. VOGEL. Again, it's to look at the Board of Veterans' Appeals regulations. The Secretary is knowledgeable in the field of the general law, specifically, and the administrative process. I think the memo officially was signed by the Secretary this week.

Mr. GOTTLIEB. Obviously, John, you were aware that that was going to take place at the time you prepared your testimony and submitted it here, and in which you took the position that you thought an independent study was still a good idea, or you had no opposition to an independent study. Now, does this creation of this select new group change your view in some way?

Mr. VOGEL. Not really. We want to look at the Department, at the organization, and the blue ribbon panel study was to look at the regulation and all of that. You're contemplating looking at the whole processes, all the processes; it seems to be heavy and long-term. My understanding, looking at the Board of Veterans' Appeals process, it's

a process, looking at that process and whether it would impede that process, whether it may be remedied through either regulation or law.

Mr. GOTTLIEB. Hold on a second. Mr. Reporter, can you get their testimony if they're not at the microphones?

The OFFICIAL REPORTER. As long as they speak up.

Mr. CRAGIN. I'm Charles Cragin, the Chairman of the Board of Veterans' Appeals. The panel that Secretary Brown is now in the process of configuring came about as a result of one of the board's initiatives, which I briefed your staff on in January, and which I indicated we were going to be seeking as a long-term initiative—a systemic review of the way the board conducted its business to ensure we weren't missing the forest for the trees. And this is the Secretary's response to my request.

Mr. GOTTLIEB. I interrupted you to ask John Vogel a question, I didn't want to interrupt you.

Mr. MANHAN. Your question to me is what I may have known regarding reviews of VBA and BVA. As I said, there are two different reviews that may very well do the same things ACUS would do. And that is the VFW rationale. It's not the $150,000 that they're going to be charged for ACUS's service. But it looks like bureaucracy compounded. I'm not being flippant, but that's where we're coming from, Mr. Gottlieb. I hope I've responded to the question.

Mr. GOTTLIEB. Unfortunately, with all we've known, we haven't corrected the situation much in recent years. So that's obviously the rationale that the Committee is working on.

Mr. MANHAN. I'll grant you that point, of course, but the second study mentioned by me is just beginning either today or tomorrow.

Mr. GOTTLIEB. Mike?

Mr. BRINCK. I think it's time that, there is value to the study if it takes, what I would call, a clean slate approach, makes no presumptions other than the fact that veterans are due benefits if they are qualified, and proceeds on how to, if you were to redesign the system and had everything you wanted, how would you design it? Is this the automobile you would build if you were going to build it today? If the answer is yes, fine, we can live with that. If the answer is no, then obviously some changes are needed.

The only thing I would ask is that, you know, I think he makes—the point that Mr. Manhan is making is valid in that we can't wait 2 years. That's the problem. If the staff or the Committee said that they're going to wait 2 years to do anything based on this study, then we'd oppose this. This is one more way to tweak the system if nothing else, in all probability. And I don't think that we ought to divest ourselves of an opportunity to take a fresh look, possibly from someone who has no connection with the VA at this point.

Mr. GOTTLIEB. You also suggest in your testimony a pilot program. Maybe you could talk about that for a minute or two.

Mr. BRINCK. It kind of goes along with this. What we're trying to do is get some discussion on, again, a clean slate approach. If you were going to design a system, what would it look like? Well, maybe—and this is not an AMVETS-proposed way to fix the system, but one idea is to possibly combine some of the functions and

personnel management of BVA and current regional office adjudication personnel, making an improved system under the direction of the chairman or someone else. But for discussion purposes, we'll stick with the chairman of BVA.

And then maybe a direct appeal to COVA out of that kind of a system, with appropriate safeguards that if a veteran doesn't want to be adjudicated on that pilot system, they have the option of going into the traditional way of doing business and facing a possible 7 years or 2 years on an original claim or 7 years on an appeal. What we're proposing sounds radical and probably is, considering the way that business has always been done. But it's obvious that the current situation isn't going to be fixed with just Band-Aids. I mean, Mr. Vogel, we certainly support keeping his personnel levels at current levels. Give him more, obviously; if VA can find efficiencies that are going to allow them to free up 4,000 people this year, I'll bet Mr. Vogel would be happy to take those 4,000 people that they're going to find elsewhere in the system.

So obviously, there is no easy fix and there is a radical change. And we're just proposing some what may seem to be way-out ideas, but let's start talking about this.

Mr. GOTTLIEB. Before I let you all go, I wonder if Mr. Cragin would come up to the table and talk about single-member boards, and discuss Russ Mank and PVA's concern about this.

Mr. CRAGIN. Russ is absolutely correct that the statute under which the board currently operates requires that all determinations of the board be made by sections. And the section is defined by statute as generally consisting of three members, with the authority to decide cases with less than three members under certain circumstances—absence, inability of a member to decide, things of that nature.

That has been the historic manner in which the Board of Veterans' Appeals has operated during its 60-year history. Keep in mind that for the first 56 years of that history, the board was the final arbiter of all veterans claims. It was the supreme court of veterans claims.

That, as we all know, has changed. We are now more, in a judicial analogy, the district court, and the Court of Veterans' Appeals becomes the circuit court of appeals. In the district court system, individual judges decide cases. They are subject to review by panels of judges in an appellate process. As you know, since I got here about 3 years ago, we've tried to do whatever we could within the confines of the law to utilize the resource.

As an example, early in my administration, I changed the way in which we conducted personal hearings. Historically, at the board, we used to conduct hearings by two or in some instances three members of a section. I read the statute which said I could assign a member or members to conduct that hearing, and we did.

We have worked under Secretary Brown's leadership for a bit more than a year now. When the Secretary came into office, one of the first things that he did, anticipating that this situation was going to exacerbate, he empaneled a group of individuals composed of people from within the Department as well as representatives of the staffs of the House and Senate Veterans Affairs Committees, and the

veterans service organizations. And through a process of inclusion, he said, "Let us evaluate this and see what we can do, given the existing resources and anticipating that the resources are not going to get better, to work this system more effectively."

And one of the recommendations that came out of that process was that the board decide its cases by single judges, veterans law judges, for example, and that the Chairman have the ability to expand the panel under a reconsideration process. Secondly, that the Chairman have the ability, in the event there is a difference of opinion, when a single member decided a case and denied the case, to overrule that decision through the administrative allowance process, thereby not expending that finite resource of judges when a difference of opinion existed.

Obviously, I suppose in the utopian world of infinite resources, every case being decided by seven judges or nine judges sounds terrific. But I think we all have to balance the competing interests, and that's what the Secretary was trying to do in putting veterans first, was balance the competing interests. I can't tell you that every single member of a section expends the same amount of time on a case as every other member of a section. I would almost logically conclude that they do not.

I have worked for judges, I know the judging process, and people rely upon their colleagues under various and sundry circumstances, and do not necessarily go through, piece of paper by piece of paper, the entire C file, which is what the board is required to do. The statute has never said that every member of a section must expend the same amount of time and attention on every case, but that it must be decided by a panel.

That is why, quite honestly, after really polling all of our members, we came forward suggesting that a 25 percent improvement in productivity was a realistic improvement that we could anticipate. Because I was not about to suggest that the same amount of time was expended with respect to every single case by every single member, which would then have extrapolated to what Mr. Mank was suggesting.

Mr. GOTTLIEB. How long will it take to get to that 25 percent improvement in productivity?

Mr. CRAGIN. Well, Secretary Brown sent the legislation to Congress on August 3 of last year, and had we had it enacted today and in place, the decisions coming out the door immediately thereafter would have represented a 25 percent improvement from that point forward, because they would have been decided by single members rather than a section.

Mr. GOTTLIEB. That doesn't answer my question. How long will it take you to get to 25 percent productivity improvement, once you have the legislation enacted, once you have the authority to do it?

Mr. CRAGIN. The day after it is signed into law, Jim, we can then start issuing decisions by a single member. And therefore that day, we can—

Mr. GOTTLIEB. How will we be able to look at that and say, "He has met his goal"? Will there be a 25 percent decrease in your backlog within 1 year?

Mr. CRAGIN. Not necessarily, because I don't—

Mr. GOTTLIEB. I'm just looking for you to tell me what the guideline is.

Mr. CRAGIN. Well, if you take a look at the number of decisions that the board issues this year, and if you assume the same number of cases coming in the door next year, you should be able to see a 25 percent increase in the number of decisions going out the door, assuming that everything else is static.

Mr. GOTTLIEB. Assuming a stable FTE and all the other—

Mr. CRAGIN. Well, and that the environment in which we function is relatively static, yes. That's the way we look at things. We evaluate, as I know you know, we look at our decisional output on a monthly basis, and we know our case count on a daily basis. We've just implemented, as Mr. Vogel indicated in his testimony, advanced docketing. So we're changing our statistical computations. But these are the things that are in process.

Mr. GOTTLIEB. At the end of month 1 of this authority, should we be able to see a 25 percent increase in output?

Mr. CRAGIN. Well, in an ideal world, yes, you would.

Mr. GOTTLIEB. I'm not trying to create a timeline for you.

Mr. CRAGIN. No, I understand.

Mr. GOTTLIEB. I'm just trying to figure out what you would be looking for.

Mr. CRAGIN. I would say within 3 months, within a quarter of us actually having it up and running; keep in mind I cannot change the physical topography of the board's basis. People are going to have to continue to work in the physical office layout that they have, we're going to have to restructure and we're working towards that now, how we assign counsel to individual board members and things of that nature.

But we at least will have the authority to have one board member deciding a case without collaborative requirements as a matter of law with other members. And quite frankly, I think it brings about something that we have not seen to date, and that is personal and specific accountability for the final product, a judge signs a decision with his or her name and we know who bought that decision.

Mr. GOTTLIEB. What impact would it have if we were to provide in the legislation for the right of appeal of single-member decisions to a three-member panel?

Mr. CRAGIN. Well, I think you're going to reduce the ability of the board to improve its productivity. If you look at essentially saying we'll take an allowance by a single member, but any denial automatically goes to a three-member, that means that, let's see, we're running 17, 17½ percent allowance today, we're doing 48 percent remand, so the remainder, having been worked once by a single member, would then have to come back around for an expanded panel to be deliberated by three, and under the legislation as proposed—and as opposed, I might point out, by the Department—the individual member who had decided the case first wouldn't even be permitted to participate in that case. So now I've essentially committed four people to adjudicate that case. I mean, frankly, we think that that gives us one step forward and maybe three steps back to do that.

Mr. GOTTLIEB. Russ, do you want to say anything further?

Mr. MANK. PVA is certainly not trying to be obstreperous about single-member boards. Our general counsel met with Mr. Cragin several weeks ago, and tried to explain our position and why we were so concerned. They've talked about this topic ad infinitum. My written statement clearly expresses our concerns. And if those concerns also appeared in that bill, then we probably would reconsider the whole situation.

But those are serious considerations that need to be addressed in that bill before we could change our position.

Mr. GOTTLIEB. Well, we'll all need to sit down, not with the microphones on, before we mark these up and work this out.

Thank you. And unless any of you gentlemen have something further, I want to thank you very much. I want to announce that the Domenici amendment, which the Chairman went over and was so—exercised about, is that a fair statement?—was defeated 35 to 63.

We'll take a 5-minute break.

[Recess.]

Mr. GOTTLIEB. Senator Akaka had hoped to be here to chair this third and final panel and receive the testimony from Rich Frank, who is the President of the Board of Veterans' Appeals Professional Association. He, of course, is stuck voting, as are all other members of the Committee. In his stead, John Tagami, his staff representative, is going to paraphrase his opening statement, and then Rich, we'll ask you to give your statement as you wish. Then we have a few questions we would like to ask you, including a followup on the previous panel's discussion.

Mr. FRANK. Certainly.

Mr. TAGAMI. Thanks, Jim. Senator Akaka just wanted me to extend his apologies for not being here. Obviously, there's a bunch of votes on the floor.

He wanted to particularly express his appreciation to the Chairman for considering all the bills today, particularly the battery of adjudication legislation, which he's pleased to be a cosponsor of, and also the comp COLA bill. And also one other thing, Senator Murkowski's bill, S. 1958, which addresses the issue of VA pensions for Alaska Natives. And he's pleased to be a cosponsor of that, and wants to work with the Senator from Alaska in getting that passed.

That's all.

Mr. GOTTLIEB. Rich Frank, you have the microphone, the tape recorder, and a few ears.

STATEMENT OF RICHARD B. FRANK, PRESIDENT, BOARD OF VETERANS' APPEALS PROFESSIONAL ASSOCIATION, INC.

Mr. FRANK. Thank you very much.

I will simply stand on the prepared statement for opening testimony. I just want to touch very briefly on a couple of points. We fully support single-member decision authority. Given the current environment, given the fact that we now have the United States Court of Veterans Appeals to review decisions of the board, we don't see any rational alternative now but to go to this mode of operation.

The timeliness crisis that Senator Rockefeller has indicated is indeed dire, and it simply will not abide any further delay in taking some form of corrective action. And this is the single clearest budgetary neutral action that can be taken to improve the timeliness of the decisionmaking of the Board of Veterans' Appeals.

Within the legislation, however, there are at least two provisions that we have great trouble with. One is the provision that on reconsideration, the original member or members of a panel would not participate. For the reasons that are elaborated upon in the Administration's testimony, it simply would be a tremendous waste of resources, it would further exacerbate the timeliness problem; I think it illuminates what is the fundamental, and in effect, political question we're dealing with here, which is how much process, how much resource can we devote to each individual case, when we have so many cases and basically a very finite number of adjudicators.

The process of excluding the original decisionmaker from the panel—apart from the fact that it is a departure from, as far as I can ascertain, judicial practice in every other arena I have ever heard of—simply will involve further delay and procrastination in entering the decision and turn it into review rather than reconsideration.

I would also point out that the provision runs headlong into another provision that's contained in the legislation, which provides that the member or the members of the panel that decide, that conduct a hearing, shall enter the final decision in a case. I cannot project what the United States Court of Veterans Appeals will say when it looks at the "may not" language and the "shall" language and how it will come out. I would guesstimate that probably they would determine that what we would end up with is an anomalous situation in which if you had a hearing, then the original decisionmaker would have to sit through the entire process to the final decision.

Obviously, that doesn't make any logical sense in my view, and it's just a further reason why I think sticking with the current process of having the original decisionmaker on the panel is sane and safe.

With respect to S. 1908, we're certainly not opposed to being subject to outside scrutiny, given our current situation; having the processing of claims and the operation of the board reviewed is, in my view, essential and it's indefensible to argue otherwise. What mode you choose to do that in, however, I think is a matter that has to be very seriously considered. The Administrative Conference of the United States courts will effectively, as we understand their operation, simply contract out to some law professors to conduct the study. They in effect become a middleman.

In our view, that could be just as effectively done by the Secretary. And secondly, I would add that in view of the situation we're in now, there's tremendous need for dispatch, and waiting 18 months for the study to be completed is probably unacceptable. We would urge that the timeframes be cut down to on the order of 9 months to a draft decision and a year to final report. I would be happy to answer any questions that the panel may have.

[The prepared statement of Mr. Frank appears on page 60.]

Mr. GOTTLIEB. Actually, on the time limit that you just referred to, the Administrative Conference has submitted testimony and said that

they believe the timeframe is too short for what we would be asking them to do, that in fact if we want them to do something as comprehensive and far-reaching as we envision, they would need more time than we are suggesting. So we are always balancing those kinds of things.

You had indicated that you had some insights in terms of the discussion that took place with the panel previous to you. I would like to give you the opportunity to talk a little about that.

Mr. FRANK. Thank you. For the record, let me make it clear that I am in fact a member of the board, that I sit on a panel; in fact, I'm a chief member of one of our sections. And I was quite interested to listen to others describe how I do my work, and the methods that my colleagues and I employ in doing my work.

For purposes of education of the Committee, let me just sketch out the entire process. The board is divided into sections by statute. Currently there are 21 sections. Nominally, these sections would each be a panel of three. We in point of fact today, or by the end of next week, will only have 56 members to sit in boardrooms, which obviously will not staff 21 sections.

Each section of three is supported by between seven and nine staff counsel. When a veteran's appeal reaches the board, it is administratively processed, obviously, and docketed. It's normally referred to one of the national service organizations for a hearing presentation. And then it is administratively delivered to the section. When it reaches the section, the case is assigned to a staff counsel.

Our staff counsel range in grades from GS-9 to GS-14. They range in experience from weeks to decades. And there is some range, obviously, in ability and their capacity and particular specialties. So, when a case reaches a section, it is the responsibility of the board members, normally the chief member, to assign that case to an attorney commensurate with his or her experience and grade, and depending on what a preliminary estimate would be of the difficulty of the case.

That staff counsel then will review the entire claims file, and I mean literally the entire claims file. These can be quite short, or they can be quite voluminous. In fact, some appeals have come to us in boxes or carts. And particularly those involving say, claims of medical malpractice, you're talking about literally hundreds of pages of clinical records and nursing notes and things like that.

The staff counsel will conduct a review and will draft a tentative decision, which will then be submitted to the panel. Now, at the Board of Veterans' Appeals, at least as far as I'm aware, virtually every judicial panel I have ever heard of—when you have multiple decisionmakers or judges, not everyone invests precisely the same amount of minutes or hours into each case as every other judge. The board members will normally divide up the responsibility so that one board member is responsible for what we call a first review. And that first review in effect will backtrack through the entire record, as the staff counsel did.

The reason for this is simply that the board member is, or has achieved, the position of being a board member because they are the most skilled and experienced people we have at the board. And they

are capable of going through a file and identifying legal and factual issues at a tempo that staff counsel cannot. And that review is designed to make sure that the written, tentative draft decision accurately reflects the actual facts and the applicable law in that case.

That process you could call doing the trees in the forest. It is very time-consuming. If you did not have someone with tremendous experience doing that, it literally could take someone days to go through a claims file if you did not have command of the law and the medicine in VA adjudication practice. Once that review is completed, and that individual makes corrections, which range from the very small to the very radical, then the decision is circulated to the other judges on the panel.

Their review then is contingent upon a whole variety of factors, in which their skill and their experience and temperament will guide them. Our cases range in complexity from the very simple to the very complex, and obviously our time and investment goes accordingly.

Typically, you will read the draft decision, which now that it has been reviewed by another board member, you are confident accurately reflects the facts and the law in the case, and determine whether you agree with the ultimate decision, which is basically what the appellant, the veteran in most cases, is really concerned about. In an era of judicial review, however, we are now tremendously concerned with process, the explanation and drafting up of a decision that can withstand judicial review.

The second or third reviewer of that decision, besides reviewing the actual draft decision, may choose to go back to the original record to examine certain points of evidence or law, identify additional issues, and in appropriate cases, there will be quite a collaborative back and forth process of trying to determine what the right outcome in that case is. When we discuss the type of productivity gains that we will achieve if we move to single-member decision authority, the reason why it is not 200 or 300 percent is because if you have to do that first review in every case, then you obviously are not going to be seeing as many cases.

The second thing is, and something that we all understand from our practice is the great advantage of the panel format, is that after someone goes through and in effect looks at every tree in the forest, then it's always very important to have someone step back and make sure that at the end of the day we come out to the right result. In a very complex, multiple issue case, one has to be very careful to guard against the fact that you become obsessed with one little facet of the case to the exclusion of missing some other things.

Mr. GOTTLIEB. Would it be a fair assumption, from what you just said, that we are likely to see more errors in the decisions that are made if we go to single-member boards?

Mr. FRANK. I think—

Mr. GOTTLIEB. And how do we safeguard against it?

Mr. FRANK. First of all, I would point out that the board has evolved over the years into a really small number of extremely competent subject matter experts, and that is why we were able to churn out those cases. We are extremely dependent upon the fact that

the board members, the cadre of board members we have now, have achieved that level of expertise or whatever. With those people conducting single-member review, theoretically, clearly, there would be a likelihood of more error being made.

The question, once again, that we have to come back to is, how much is enough and how long can people wait. I think in the discussion we've had today, and I've seen today, we all tend to think about looking at that one individual appeal, that one individual case, and that one individual veteran. And of course, for that individual appellant, it's the most important case in the world, and there's no limit to how much review and procedure we should have.

But what we face is this stupendous docket of cases and only so many of us. And as we keep accreting additional levels of analysis and review and explanation or whatever, clearly we're not going to be able to do as many cases. I think that's the tradeoff. And I think I would really emphasize that as bad as the situation is now, and it is clearly unacceptable, one of the things that is really upsetting now to the board members is the prospect that we're going to be losing a very high percentage of our fellow board members to become administrative law judges.

And when we lose that level of experience and expertise, those people are not out there on the streets to be picked up. This is extremely arcane and specialized, combinations of law and medicine. It takes a long time to train people to get them up to a level of competence. If we have these people walking out the doors, as we're facing now, it could very well have a very significant and severe impact on our ability to achieve productivity gains under a single-member decision environment, and the ability of the board to maintain a very high level of quality in the decisionmaking process and making sure that every appellant gets every benefit due.

I can only tell you that having sat there and done these cases now for 17 years, one of the things that's most distinctive about our system is that most cases reaching the board are by an individual who is either pro se or is represented by a national service officer. They will typically couch their claim in a certain theory of the case. They will frequently rely upon what I sometimes refer to as the layman's almanac of medical misinformation as to what they think would be the basis upon which we could grant the benefit.

In a vast number of cases, what effectively happens is when the case reaches the board, we don't simply confine our review to what the theory of the case that the appellant or the service officer or the attorney has advanced to us. We look at all possible bases upon which a case can be granted, and based on our experience, we will very frequently figure out that the appellant may have claimed that "I should be service-connected based on incurrence," and we'll say "No, secondary service connection is the basis, you should get service connection," which the appellant may very well know nothing about.

But once again, it gets back to having the skill and experience to recognize those things. And one of the things about the duty to assist that's so critical now in the way it's structured is it makes—the board member in effect has to put together in his mind or her mind the best possible case for the appellant. If I were representing the appellant,

what would be the lines of argument I would pursue, and having identified all of those, then I would have to resolve in my mind, which one is a winner, and how have we dealt with each one of those lines of review. And then you turn around and in effect judge the case.

So the appellant in effect gets the benefit of having the world class experts in the adjudication of individual veterans claims first looking at the claim on the basis of what would be the most profitable theory of the case for that appellant for any individual issue, and then have that person turn around and judge that issue.

Mr. GOTTLIEB. Let me interrupt you. You obviously could go on and talk about this for a long time.

Mr. FRANK. I'd love to.

Mr. GOTTLIEB. What is the average number of years of experience of the board members? Is there an average?

Mr. FRANK. Right now, I don't have an exact average figure on hand. There is clearly, I think, sort of a generational process now at the board. There was for many years what was referred to as the Class of 1945, which were obviously the World War II era veterans. They were board members, most of them retired in the 1970's and 1980's. The majority of the attorney members of the board now are typically in the age range between approximately—I would say, 40 and 50 would be the bulk of the board members. Not too many above 50 at this time, although we have at least three or four who are either at or beyond retirement age.

Mr. GOTTLIEB. You talked about how it takes a long time to train these people to get them to be the experts that we need them to be. Please talk about that some more.

Mr. FRANK. Well, just to put it in simple terms, the current printed edition of title 38, United States Code, runs to 919 pages. 38 CFR, in its two printed editions, runs to 1,700 pages. The United States Court of Veterans Appeals is now working on its sixth volume of decisions, and so far the printed editions total 3,131 pages. That's the law.

Then you have the medicine, because we overwhelmingly deal with claims for compensation and pension in which the factual issues are usually medical. And in order to begin to understand that body of law and that body of medicine, it takes a very long time of very intense work.

And I would add to that, that body of statutory and regulatory authority has accreted over the better part of three to five decades, and it has not been put together by someone who has a master's degree in logic. There are innumerable places of what I would call the trap doors and the secret passageways that you pick up basically by doing it for a long time. An example, you've got an effective date claim—who's going to know except somebody who's done it that you look at 3.400 for a series of rules, and then you have to go back to 3.41 for a bunch of others.

Mr. GOTTLIEB. I know it's a complicated process and there are a lot of law and rules and regulations and court decisions to consider. What I'm trying to find out is, before you give a board member his or her first case, what is the training process?

Mr. FRANK. You work as a staff counsel at the board and typically the timeframe is 7 to 11 years.

Mr. GOTTLIEB. So someone coming in today as a staff attorney would have that amount of time before they would—

Mr. FRANK. Historically, that's been the pattern. I would qualify that by saying this. One of the problems about our current process is that our staff counsel can't produce cases as rapidly as they could in the past. So they aren't seeing as many cases in the course of any given timespan. And there is no substitute in this job, basically, for learning on the job by doing a lot of cases.

So it's quite conceivable that to have someone up to the same level of expertise that we had several years ago when someone had 7 years of experience, we may be looking at a longer process. And I would add that it's much more difficult to train staff counsel now, because the complexity of the legal analysis has gone up astronomically.

Mr. GOTTLIEB. John, I know you had questions the Senator wanted to ask.

Mr. TAGAMI. We just have basically four questions, Rich. They really arise out of Senator Akaka's legislation a couple of years ago, proposing that we have pay equity with BVA and administrative law judges. He's always been interested in this and the impact of this disparity on departures. Anyway, the first question is, and you touched on this earlier, what is the status of the departure of board members to become ALJ's?

Mr. FRANK. At the end of this month, we will have lost a total of six board members since last July, attorney board members. That's out of what we started with as 55 board members. At the end of next week, we will have 49 attorney board members. Of those 49 attorney board members, 39 have begun the process of applying for positions as administrative law judges.

Of those 39, six are entirely through the process, are in fact on a list maintained by the Office of Personnel Management and are awaiting an opportunity to become an administrative law judge in the very near future. Eight are at the step immediately before that, and they are about to be certified onto the list; five have completed their application; and another nine are in the process of completing it.

Based on the historical record we've had, every board member at least since 1980 who's applied has been placed on the list, and everyone who has indicated a geographic availability outside of Washington, DC, has ultimately been offered a position. The Social Security Administration, in fact, has budgeted for hiring a little over 200 administrative law judges in this fiscal year. They have already hired 90, they will hire in excess of 100 over the next 4 months. I would anticipate that of the board members currently on the list, we'll probably be losing 4 to 10. That's by August. Those people can't be replaced. It's as simple as that.

Mr. TAGAMI. Are the current provisions concerning terms for board members a major reason why they're leaving?

Mr. FRANK. That clearly is one of the most important reasons. One of the, I believe, unintended facts of the Judicial Review Act was to remove board members from their prior career position. We are now the only employees in the Federal Government as far as we can ascertain under the general schedule who have no tenure. We have basically terms of appointment.

Under the enabling legislation, the board was divided into thirds; one group received a 3-year initial appointment, one group received a 6-year initial appointment, and one group received a 9-year initial appointment. Those appointments were made effective in July 1991. Therefore, we have approximately one-third of the board that comes up for the end of their terms in July of this year, in July 1997, and in July 2000.

Under the statutory scheme, there is no provision whatsoever for any standards of appointment or reappointment. There is no opportunity to present an appeal or a case to the Chairman or the Secretary, and there is no provision for notice.

And what's even more alarming about the situation is that the statutory authority for the appointment of board members says that the Secretary appoints based upon the recommendation of the Chairman.

The legislation makes no provision for any individuals to act other than the Secretary and the Chairman. If for any reason whatsoever there is no Secretary, there is no Chairman, approximate to July 1994, July 1997, July 2000, about one-third of the board would effectively cease to be board members, not based on our performance or any other factor, but simply because by statute they were out of a job and on the street.

Obviously, we think this is tremendously unfair. We're not opposed to accountability, but in effect the term at whim I think is really unconscionable, and we would like to get that issue addressed. And we have been working, particularly with Congressman Evans on the House side, and I believe we're going to have a package together on the April 13 hearing that will address this matter.

But that clearly has had a tremendous impact on people leaving the board. It's also had an impact on some of our staff counsel leaving who basically were on track to become board members, who left over the term issue. We have at least five in that category who left the board, who were people that we were pretty confident were going to be board members one of these days, but decided that they didn't want to reach somewhere between the 17th and the 20th year of a career in the Federal Government, having been appointed to the board sometime before, and be out on the street. It's as simple as that.

Mr. TAGAMI. How do you ensure accountability if you eliminate these terms?

Mr. FRANK. The material we're working on, I think, is going to address that. There is a provision in the administrative law judge core bill which passed the Senate last November which provides for a discipline and review panel. And basically, that package modified to reflect the structure that we operate under and also somewhat to reflect the scale. Obviously, there are 1,100 or more administrative law judges. There is only statutory authority for 66 board members. So we've adjusted the panels accordingly for the review.

But fundamentally, that would be the mechanism by which you would retain accountability. And I would emphasize that we have no opposition whatsoever to accountability. In fact, we may, if this is accepted, become in effect the first administrative law judges to be

subject to this sort of system. It's not the accountability or standards or anything like that that we're opposed to, it is simply the total lack of process or due process or standards that the current situation provides that we find really unacceptable.

Mr. TAGAMI. The ALJ's—how are they accountable?

Mr. FRANK. I think the fact that the ALJ core bill makes provisions for this would indicate that there is some perceived need for accountability there. As things now stand, there is a provision in title 5 that governs the removal of an administrative law judge. And interestingly enough, in our statutory authority, during the course of your term of 3, 6 or 9 years, if someone wanted to remove you in the middle of that interval, they would have to apply the same standards that apply to administrative law judges under title 5, and that's right in 7101 of title 38.

Mr. TAGAMI. I have just one more question. In your opinion, is the lack of pay comparability a major issue for departure?

Mr. FRANK. Right now, the two most important issues that clearly are driving so many of our colleagues to leave are clearly the term issue and the pay comparability issue. Essentially, we enjoyed pay comparability with the administrative judges, and specifically Social Security administrative judges, for decades prior to the Pay Act of 1990. At that time, that pay comparability was severed, and the administrative law judges were placed on a separate scale. It's significantly greater than the pay received by board members, and obviously that's a very material factor affecting our people leaving.

Those are the two fundamental issues that are basically stripping us of our board members. And I would emphasize that in the process of selecting administrative law judges, the 5-point and 10-point preference for veterans means that the first people out the door who are board members are in fact our veterans, and the pattern, the six that just left, all six are veterans. We had a 70 percent combat-disabled veteran who left, another veteran who had a rating in excess of 50 percent for noncombat, but serious disabilities. And under the system, ironically, what's happening is that the number of veterans who serve on the Board of Veterans' Appeals is going to be tremendously diluted within probably the next 18 months.

Mr. TAGAMI. Jim, I just wanted to thank you, Senator Akaka wanted to thank the Chairman for allowing him to, through me, posit these questions on term limits and pay equity, even though they're not strictly a part of the agenda today. I know that it has an indirect effect on the process of adjudication, and I know that's one of the reasons why he cosponsored your bill for a study on adjudication reform. Thanks.

Mr. GOTTLIEB. Anything else? If no one else has any questions, thank you. This portion is adjourned.

[Whereupon, at 4:33 p.m., the Committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

PREPARED STATEMENT OF CHAIRMAN JOHN D. ROCKEFELLER IV

Good morning, and welcome to today's hearing. We have a number of bills on today's agenda. These include a series of bills that I introduced to improve VA's adjudication process, a cost-of-living allowance for VA compensation programs, and bills relating to VA's home loan program, the establishment of a Ronald McDonald House at the Hines VA Medical Center, the VA pension program, and the statutory date of the Vietnam era.

I want to emphasize how deeply committed I am to tackling the claims backlog. This is a very serious issue. VA indicates that it takes over 200 days to decide an initial claim, and, if change is not made, potentially five years to decide an appeal. Veterans must not be made to wait so long for the compensation, pension, or education benefits they deserve! I feel strongly—as I know Secretary Brown does as well—that justice delayed is justice denied.

Some argue that the Court of Veterans Appeals is the sole cause of the backlog problem. I wholeheartedly disagree. While the establishment of the Court cannot be separated from the timeliness problem, it is only because the Court, as the avenue of recourse for veterans, makes VA resolve claims as it should. We must move beyond arguments against the Court and look for positive ways to improve the adjudication system. We need to do better.

I have introduced a comprehensive package of bills designed to address some of the problems of the current claims processing system. At the Committee's budget hearing earlier this month, we began an important dialogue on these bills and on ways to improve the adjudication system generally. Now that everyone has had a chance to review these bills, I look forward to continuing that dialogue.

As a final note, I am very proud to have introduced, with the cosponsorship of the entire Committee, S. 1927, a bill to provide a cost-of-living increase in the monthly compensation payments to our Nation's service-disabled veterans and their survivors. This increase will affect the daily lives of over 2½ million veterans and their families. It is our moral responsibility to continue to provide increases in compensation and DIC benefits in order to ensure that the value of those top priority, service-connected VA benefits is not eroded by inflation.

I look forward to receiving testimony on each of the bills before the Committee today.

PREPARED STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL

Thank you, Mr. Chairman, for calling this hearing on various, pending veterans' legislation.

Today, I'd like to focus my comments on the so-called backlog problem in the VA adjudication system. It's no secret that some veterans have to wait five years to get a final, straight answer from VA about their disability or compensation claim.

The current backlog of claims at VA regional offices is about 600,000, with an average of seven months required to make a decision. In my home state of Colorado, there are almost 4,000 cases pending and it takes about a year to make a decision.

This backlog frustrates veterans and makes them feel as if the government has cast them aside. It breeds distrust of VA, and the anxiety of not knowing what's in the future.

Making matters worse, many of these veterans waiting for an answer are homeless, poor, seriously ill, or have Post Traumatic Stress Disorder (PTSD). Unfortunately, they are often the most vulnerable veterans.

My office, like every Congressional office, spends a lot of time working with these veterans and relaying the veterans' concerns to VA. But like the veterans we're helping, we're usually just spinning our wheels and fighting a system that needs reform.

I know of veterans in Colorado who have lost their homes, or have died, before their claim is resolved. This isn't right—veterans and their families deserve to be treated with more dignity.

There are many contributing factors to this problem, but I think Chairman Rockefeller's five bills—which reduce paperwork, increase efficiency, and recognize the needs of seriously ill veterans—will improve the system. I hope we can do more.

I'm glad Chairman Rockefeller is focusing on this issue. Again, thank you, and I look forward to today's testimony.

PREPARED STATEMENT OF SENATOR FRANK H. MURKOWSKI

Good afternoon. It is a pleasure, as always, to welcome John Vogel to this room.

I know, Mr. Chairman, we have a lot of business to accomplish today—we will hear from three panels of witnesses, who will offer their views on as many as ten pieces of legislation. That being the case, I will not offer an extended statement before we begin.

I do want to state, however, that I am most anxious to hear the views of VA, and the VSO's, on the five adjudication-related bills pending before the committee. We want to move quickly on those bills. As we all agree, the adjudication backlog situation is totally unacceptable. We have to move forward now to adopt these short term solutions. And we need to look for further solutions. If it takes an independent study by an outside organization like the Administrative Conference of the United States to find those solutions, so be it.

I also want to mention briefly an item on the agenda which VA is not prepared to discuss today. That item of business is S. 1958, which I introduced earlier this week and which, I am proud to say, was co-sponsored by one of the most distinguished members of this committee, Senator Akaka. That bill—which I view as being an entirely technical bill since it seeks only to clarify and reinforce the meaning of a statute, the Alaska Native Claims Settlement Act or "ANCSA," which is already on the books—is a vital piece of legislation insofar as Alaska natives, and this Senator, are concerned.

S. 1958 will assure that the purposes and clear language of the Alaska Native Claims Settlement Act are put into effect by VA by specifying in VA statutes that Alaska Natives who receive dividends from Native corporations created by ANCSA will not be penalized by having to suffer dollar for dollar offsets in their VA pension benefits. Mr. Chairman, the Congress has already spoken clearly on this subject by specifying in 1987 amendments to ANCSA that Native corporation dividends will be totally disregarded for purposes of *any and all* means-tested Federal benefits. Notwithstanding, I recently learned that, contrary to the intent of ANCSA, VA is of the view that such dividends shall not be disregarded for purposes of VA pension.

My bill, Mr. Chairman, would direct that VA follow ANCSA by specifying that Native corporation dividends be disregarded for purposes of VA pension benefits. This is what the Congress intended by ANCSA. And it was part of the deal under which the land claims of Alaska Natives were settled. Fairness to our Native citizens requires that all agencies of the Federal government, including VA, be required to honor that "done deal" by assiduously following the clear intent of ANCSA.

I understand, Mr. Chairman, that VA will comment on my bill in the form of a supplemental statement to this record. That arrangement is acceptable to me. I only hope that VA sees the light on this issue, and supports S. 1958.

PREPARED STATEMENT OF SENATOR STROM THURMOND

Mr. Chairman: It is a pleasure to be here this afternoon to receive testimony on various legislative proposals. I join you and the members of the Veterans' Affairs Committee in extending a warm welcome to Mr. Vogel, the Under Secretary for Benefits. I also welcome the other witnesses who will testify today. The work you do on behalf of your organizations and for all veterans is greatly appreciated.

Mr. Chairman, as you are aware, the Veterans Benefit Administration must deal with a number of issues. A critical issue is the adjudication backlog. The number of

claims for benefits pending in the system is growing and the processing time is increasing. This trend will likely continue as more veterans enter the system. The claims backlog has reached alarming levels. The backlog is increasing in terms of number of cases and in terms of time required for processing. The Department must devote the required resources, technology and personnel to resolve this situation.

I have stated many times before that the highest obligation of American citizenship is to defend this country in time of need, and the highest obligation of this grateful Nation is to provide for those who have served their country in a time of need. One of our obligations is to ensure that veterans' claims are processed and adjudicated in a timely and fair manner.

As a result of this hearing, we will be better informed about the legislation and other actions which will help the claims backlog problem. I look forward to working with members of this Committee and other interested parties in resolving this problem.

Mr. Chairman, S. 1927 would increase the rates of compensation paid to veterans with service-connected disabilities and would also increase the rates of dependency and indemnity compensation (DIC) paid to the survivors of certain service-disabled veterans. The rates would increase by the same percentage as the increase in Social Security and VA pension benefits. The compensation COLA would become effective on December 1, 1994. It provides for a COLA for 1994 alone; it is not an "indexation" bill.

Mr. Chairman, I am pleased that we are considering a "clean COLA" at this time. An early passage of this measure will allow VA to make the adjustment necessary to assure that these benefits are received in a timely fashion.

Some may question why a COLA is being considered for veterans when the Congress has previously implemented so many pay and COLA freezes for others. Indeed, many of the veterans groups have testified regarding their willingness to sacrifice, as long as all were treated fairly. S. 1927 meets this standard of fairness. It provides for a COLA equal to that granted to Social Security recipients. In other words, for 1995, Social Security and VA compensation would be linked. If Social Security is not frozen, VA compensation would not be frozen.

Mr. Chairman, I look forward to reviewing the testimony.

PREPARED STATEMENT OF R. JOHN VOGEL, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Department of Veterans Affairs (VA) on:

S. 1927, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1994";

S. 677, a bill to authorize the establishment on the grounds of the Edward Hines, Jr., VA Hospital, Hines, Illinois, of a facility to provide temporary accommodations for family members of severely ill children being treated at a nearby university medical center;

S. 789, a bill to provide that future increases in the monthly amount paid by the State of New York to blind disabled veterans shall be excluded from the determination of annual income for purposes of payment of pension by the VA Secretary;

S. 792, a bill to change the date for the beginning of the Vietnam era for the purpose of veterans' benefits from August 5, 1964, to December 22, 1961;

S. 1626, the "Veterans' Home Loan Improvement Act of 1993";

S. 1904, a bill to improve the organization and procedures of the Board of Veterans' Appeals;

S. 1905, a bill to improve the processing of benefits claims by VA;

S. 1906, a bill to provide that service connection for disabilities arising from exposure to ionizing radiation or dioxin may be established by direct evidence;

S. 1907, a bill to require that VA adjudicate and resolve certain claims relating to medical malpractice in the health-care services provided by VA; and

S. 1908, a bill to provide for a study of VA's processes and procedures for the disposition of claims for veterans' benefits.

S. 1927

S. 1927 would increase, effective December 1, 1994, the rates of VA disability compensation and dependency and indemnity compensation. The increase would be of

the same percentage that Social Security benefits are increased under the Social Security cost-of-living adjustment provision.

The increase provided by S. 1927 would protect VA disability compensation and dependency and indemnity compensation against inflation, as veterans' pension and Social Security benefits are protected under current law. It is identical to that requested in the President's budget proposal, and we greatly appreciate your introducing this legislation. We strongly support this increase.

S. 677

S. 677 would authorize the Secretary to enter into a long-term lease with The Caring Place at Loyola, Inc., to establish and operate a Ronald McDonald House on unused grounds of the Edward Hines, Jr., VA Medical Center. The facility would provide temporary accommodations for family members of severely ill children who are being treated at the Loyola University of Chicago Medical Center, which is adjacent to the Hines VA Medical Center. Under the lease, no cost to the Government would be permitted for the use of this property and VA would not be required to charge rent.

The Caring Place plans to provide a much-needed service for the Loyola-Hines medical community. It is a good example of a successful joint public-and-private venture that benefits the community at no out-of-pocket cost to the Government. The local community and its leaders have already recognized VA for its efforts in working together with The Caring Place. VA currently does not use, and has no long-range plans for using, the site on which the Ronald McDonald House would be established. The site is ideal with its proximity to the VA Day Care Center and Intergenerational Park, potentially enhancing the functions of these two areas. Thus, VA supports enactment of S. 677.

S. 789

For purposes of determining annual income for VA pension eligibility, 38 U.S.C. § 1503(a) requires that payments of any kind or from any source be included except for specifically excluded payments. S. 789 would add to the list of exceptions in § 1503(a) increases, made after the date of enactment of this bill, in amounts paid to totally disabled and blind veterans by New York State.

We oppose this bill. Pension is a need-based benefit, and enactment of this proposal would result in disparate eligibility rules for one category of veterans. We believe veterans of equal means should be treated equally under our pension program.

S. 792

Current 38 U.S.C. § 101(29) defines the term "Vietnam era" for purposes of veterans' benefits as the period beginning August 5, 1964, and ending on May 7, 1975. S. 792 would change the beginning date of that period from August 5, 1964, to December 22, 1961.

We believe this bill could have significant "paygo" costs which could require offsets under the Budget Enforcement Act. For this reason, until we have developed a cost estimate for this bill, we defer taking a position. We will develop a formal position and share it with the Committee as soon as we have a firm cost estimate and better understand the full impact of the bill.

S. 1626

Section 2 of S. 1626 would repeal the requirement that a veteran dispose of a home acquired with a VA housing loan before previously-used loan entitlement may be restored. Under current law, a veteran generally may have entitlement restored only if the veteran meets two conditions. The first is that the prior VA loan has been repaid in full, VA has been released from liability on the guaranty, or, if VA has suffered a loss on the loan, the loss has been repaid in full. S. 1626 would not alter this condition. The other condition is that the veteran has disposed of the property, or the property was destroyed by fire or other natural hazard. Currently, this second condition does not apply if the veteran seeks another VA loan to be secured by the same property as secured the original VA loan. S. 1626 would repeal this condition.

The Veterans Housing Act of 1974, Public Law No. 93-569, enacted December 31, 1974, added the current conditions for restoration of entitlement. VA's experience over the past 19 years has been that circumstances often make it difficult or impractical for veterans to dispose of the first home. Veterans nevertheless need to acquire new residences due to job transfer, marital breakup, change in family size, or other reasons.

Thus, the requirement that veterans dispose of the first home may unnecessarily prevent veterans from obtaining VA financing for the new housing they require.

We are concerned, however, that S. 1626 as drafted would repeal the Secretary's discretion to waive the conditions for restoration of entitlement. Although the law contains no standards for exercising this waiver authority, the legislative history of Public Law 93-569 suggests that VA would use this authority only in unusual situations such as where the property is substantially damaged or destroyed by a natural disaster. VA's ability to assist veterans following disasters such as the recent California earthquake or the Midwest floods would be limited if VA had no discretion to waive the conditions for restoring loan entitlement. Accordingly, VA urges that the authority to waive the requirement that the loan be repaid in full be retained in the law. We further believe that the present administrative practice of using the waiver authority in only limited circumstances should be codified. VA would be pleased to work with the committee staff in drafting appropriate language. Subject to these modifications, VA supports section 2 of S. 1626.

Section 3 of S. 1626 would authorize VA to include in interest-rate-reduction refinancing loans an additional amount for energy efficiency improvements. We believe that this provision needs more study. Therefore, VA cannot support this proposal at this time. Section 9 of the Veterans Home Loan Program Amendments of 1992, Public Law 102-547, authorized VA to guarantee loans for the acquisition of a property which include up to an additional $6,000 for energy efficiency improvements. These extra amounts for energy improvements may cause the loan in some cases to exceed the appraised value of the property. Because this authority is new and only a relatively few such loans have been recently guaranteed, VA has not had the opportunity to evaluate this program. While VA supports the concept of energy-efficient mortgages, we believe further expansion of this authority should be delayed until both VA and private lenders have had an opportunity to fully evaluate how this concept is working in practice.

S. 1626 would increase spending; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. VA is currently developing these estimates.

S. 1904

S. 1904 proposes to improve the organization and procedures of the Board of Veterans' Appeals. While we are pleased to comment on this bill, we respectfully request your continued consideration of VA's proposals contained in S. 1445, the "Veterans' Appeals Improvement Act of 1993," which you introduced by request.

Section 1(a) of S. 1904 would remove the 67-member cap currently in 38 U.S.C. § 7101(a) on the Board of Veterans' Appeals (Board). VA supports enactment of this provision.

Section 1(b) would remove the authority currently in 38 U.S.C. § 7101(c) for the Board Chairman to appoint temporary Board members, would place into proposed 38 U.S.C. § 7101(c)(1) the authority, currently in 38 U.S.C. § 7102(a)(2)(A)(ii), of the Chairman to appoint acting Board members, and would allow acting Board members to continue to so serve "in the making of any determination on a proceeding for which the individual was designated as an acting member," notwithstanding the expiration of the 90-day term allowed for acting members. VA also supports this provision. No Board Chairman has ever used the authority to appoint a temporary Board member. As Secretary Brown wrote when transmitting the "Veterans' Appeals Improvement Act of 1993," the Board has had acting members hold a hearing, request a medical opinion or otherwise participate in a case only to have their period as acting members expire by the time a decision was ready to be made. Section 1(b) would eliminate that problem by allowing acting members to follow through with a case to completion.

Section 1(c) of S. 1904 would require the Board Chairman's annual report to include the number of acting Board members appointed during the preceding fiscal year and the number of cases in which each acting member participated during that year. This provision is also in S. 1445. We have no objection to its enactment.

Section 1(d) of S. 1904, in replacing current 38 U.S.C. § 7102 with a new § 7102, would allow a proceeding instituted before the Board to be assigned to one Board member or a panel of at least three Board members, which member or panel shall make a determination on the proceeding, including any motion filed in connection with it. In replacing current 38 U.S.C. § 7103 with a new § 7103, section 1(d) would allow the Chairman to order reconsideration of a Board decision upon his or her own

initiative or upon motion of the claimant, require that cases under reconsideration be referred to a panel of at least three members if originally heard by a single member and to an enlarged panel if originally heard by a panel (in neither case including any member who made the original decision), and requiring the reconsideration panel to review the entire record before the Board.

VA strongly supports giving the Board Chairman the authority to assign proceedings before the Board to individual members for decision. We estimate that, with this authority, the Board will be able to increase its productivity by more than 25 percent.

We have no objection to section 1(d)'s changes to the reconsideration process, with one exception: excluding the original decision-makers from reconsideration panels. For three reasons we strongly urge that this exclusion be deleted. First, it would change reconsideration into something it was not intended to be: review. In our view, reconsideration was meant to be reconsideration, a rethinking of the first determination, not review. To the best of our knowledge, both judicial and administrative reconsideration is typically performed by the original decision-maker, who may be augmented by other judges or claims examiners of the same rank. For example, reconsiderations of single-judge decisions in the United States Court of Veterans Appeals are conducted by a panel of judges including the single judge who originally decided the case.

Second, excluding the original deciding Board member would waste scarce resources. Appeals to the Board tend to be fact-intensive, with those facts extending over many years. We note that we are in the midst of marking the 50th anniversary of World War II, and that nearly 30 percent—8 million—of our veterans served in that period. Some of our claims files require their own cart! When the Chairman orders reconsideration in a case, at least as many new members are assigned to the reconsideration panel as originally decided the case. Even if the original decision-maker could participate in reconsideration of a single-member decision, that single member would be outnumbered at least two-to-one. Therefore, we cannot agree that the best use of limited resources would be to guarantee that on reconsideration no decision-maker would already be familiar with the facts.

Third, no adequate justification has been presented to support the necessity for excluding the original decision-makers from reconsideration. The Board's Fiscal Year 1993 Report shows that, of the 161 reconsiderations ordered during that period, in which original decision-makers did participate, nearly 78 percent resulted in a claim being allowed or remanded to a regional office. Veterans and other claimants are being treated fairly on reconsideration. There is no need to change the current procedure.

Besides these three reasons for questioning the exclusion of original decision-makers from reconsideration panels, there is the problem that such a provision would seem to be at odds with the requirement in proposed 38 U.S.C. § 7107(c) that the Board member or members designated by the Chairman to hear an appeal participate in making the final determination of the claim. Thus, the very Board members who heard testimony in an appeal and observed the witnesses, upon reconsideration would not participate in making the final decision.

Section 1(e) of S. 1904, in replacing current 38 U.S.C. § 7107 with a new § 7107, would add to the current provisions concerning docketing of appeals and advancing cases on the docket for sufficient cause shown, provisions currently in 38 U.S.C. §§ 7104(a) and 7102(b) concerning the right to a hearing. In addition, section 1(e) would allow appellants to request hearings at the Board's principal location or at a VA regional office, require that hearings be scheduled in the order VA receives requests for them, and allow a hearing to be scheduled earlier than its place in request order if the Secretary is aware of serious illness or severe financial hardship of the appellant. Furthermore, this section would allow the Secretary, at the Chairman's request, to provide suitable facilities and equipment to enable an appellant at a facility within an area served by a regional office to participate, through voice transmission or through picture and voice transmission, in a hearing with a Board member or panel sitting at the Board's principal location. It would also allow the Chairman to offer such a telecommunicated hearing in lieu of a personal hearing when such facilities and equipment are available. Appellants would still have the right, however, to a personal hearing.

With one important exception, VA supports this provision. The exception concerns the requirement that hearings be scheduled in the order in which VA receives requests for hearings. Current § 7110 authorizes, in effect, a separate "hearing docket" for each

regional office. As revised by section 1(e) of S. 1904, § 7107 would require that all hearings, whether at a regional office or the Board's principal location, be scheduled in the order in which VA receives requests for such hearings.

A problem of fairness has arisen under current law because, until recently, an appeal was not assigned a docket number until it was physically transferred to the Board in Washington. If the appellant requested a field hearing, the case would not be transferred until the field hearing was held. Because the law requires the Board to consider cases in docket order, an appellant who requested a hearing in Washington would receive a docket number lower than a veteran who requested a field hearing, even if both filed their substantive appeals on the same day.

We have fixed that problem. Under what we call "advance docketing," a procedure implemented with the cooperation of the Veterans Benefits Administration, cases in which a substantive appeal has been filed will be placed on the Board's docket while the claims folder remains at the regional office until the Board is ready to consider the appeal in its order on the docket. This procedure will greatly reduce the need to transfer records between the Board and the regional offices, thereby reducing the time and staffing consumed by responding to case status inquiries and the case-transfer and tracking process. In addition, "advance docketing" will permit VA to comply with the Court's decision in *Ebert v. Brown,* 4 Vet. App. 324 (1993), by providing the regional office access to a veteran's records to act on new claims while the veteran's appeal of an earlier decision remains in appellate status. And for the purposes of S. 1904, advance docketing will eliminate any unfairness between appellants choosing field hearings and those choosing hearings in Washington.

The problem with section 1(e) of S. 1904 is that the scheduling provisions would be very difficult to administer and could create a fairness problem of its own. If, for example, VA on March 24 received a Montana veteran's request for a field hearing, and on March 25 received a Virginia veteran's request for a hearing in Washington, section 1(e) would require the Board to hear the Montana veteran before hearing the Virginia veteran, regardless of when the next visit to Montana by a traveling member was scheduled The Virginia veteran's right to a hearing would be subject to the Board's ability to send a member to Montana to conduct a hearing.

In fact, the scheduling of any appellant's hearing, whether in the field or in Washington, would be delayed until the slowest docket in the system provided hearings for all appellants who filed their substantive appeals earlier. For example, if on March 25 VA received an Alaska veteran's request for a field hearing, and the Board happened to have a traveling section due in Anchorage on May 1, the Alaska veteran could not be heard on May 1 unless every hearing request received before March 25 had been satisfied.

Another administrative problem which would result from S. 1904 is the difficulty involved in generating a hearing schedule based on request dates from 58 regional offices. The Board would have to develop a system which insured that an appellant whose request for a field hearing was received on March 24 was scheduled ahead of every other appellant whose request, whether for a field or Washington hearing, was received on March 25 or later. I cannot give you cost estimates at this time, but it will be extremely complicated.

We understand the motive behind this provision in S. 1904. We believe, however, that we have solved the problem without creating an administrative burden that would not seem to be able to get matters decided any sooner.

S. 1905

Section 1 of S. 1905 would give the Secretary the discretion to require pension applicants or recipients to annually file a report on their annual income and corpus of estate. Under current 38 U.S.C. § 1506, the Secretary must require the filing of such reports as a condition of granting or continuing pension. A large proportion of our beneficiaries, however, have either no income or only Social Security benefits as income. For several years, VA has been able to verify Social Security income by computer matching. In general, we support this grant of discretionary authority. We believe that much of the information gathered by these annual reports can be verified through other means, such as the Social Security match mentioned above.

If given this authority, we would develop criteria for exemptions that are consistent with the need to maintain program integrity, and implement our policy through notice-and-comment rulemaking so that veterans service organizations and other interested parties would have an opportunity to comment on the policy.

Section 2 of S. 1905 would require the Secretary to accept a claimant's written statement as proof of the existence or dissolution of a marriage, the birth of a child, or the death of any family member. If the statement on its face raises a question as to its validity, then the Secretary may require supporting documentation. We do not support enactment of this provision as drafted. We think the language goes too far in requiring that claimants' written statements be accepted as proof, rather than giving the Secretary discretion to so accept them. There may be reasons other than something on the face of a statement to question its validity, such as previous statements or documentation contrary to the statement in question. We are currently evaluating a recommendation of the Blue Ribbon Panel on Claims Processing to change evidence requirements to allow acceptance of photocopies (as opposed to certified copies) of marriage certificates, birth certificates, death certificates, and divorce papers. If this evaluation proves favorable, we would prefer to work within the regulatory process already begun. Legislation would remove our discretion to change evidence requirements if future circumstances should warrant it.

Section 3 of S. 1905 would require the Secretary, for purposes of disability compensation and pension claims, to accept a private physician's medical examination report, without corroboration by a VA examination, if it contains sufficient clinical data to support the diagnosis or to provide a reliable basis for evaluating the degree of disability. We oppose this provision. As drafted, it would seem to require that VA's adjudications be controlled by private physicians' reports, even if they are diametrically contrary to other evidence on file (including reports of even more comprehensive examinations by VA or others). We believe VA must retain the ability to reconcile conflicting evidence of record by various means, including additional special examinations and request for review by independent medical experts. We also believe the Secretary should have the flexibility to prescribe rules that are consistent with the need to maintain program integrity. For example, we have already published a proposed regulatory change to allow acceptance of private physicians' statements in certain kinds of claims where degree of disability is at issue. However, this rule provides that qualifying statements may be accepted, but does not require that they be accepted in all cases. To qualify for acceptance, a private physician's statement must include clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays, and laboratory tests, and otherwise be adequate for rating purposes.

Section 4 of S. 1905 would require the Secretary to report to both the Senate and the House committees on veterans' affairs the status of an agreement between the Secretary and the Secretary of Defense providing for the immediate transfer of medical records of Armed Forces members upon their separation from active duty. We already have agreements in effect with the Army and Navy, and we expect to have agreements finalized with the Air Force and Marines by the end of April. At this time, we see no need for legislation on this matter.

S. 1906

S. 1906 would preclude VA regulations from prohibiting or being construed as prohibiting any veteran from establishing service connection under 38 U.S.C. § 1110 for a disability claimed to be the result of exposure to ionizing radiation or dioxin, even though VA regulations do not specify the disability as radiogenic or associated with dioxin. This bill is intended to overturn the decision of the United States Court of Veterans Appeals in *Combee v. Principi*, 4 Vet. App. 78 (1993). The court in that case upheld a VA regulation which provides that a veteran cannot establish direct service connection based solely on radiation exposure for a disease not in VA's regulatory list of radiogenic diseases. The court stated, however, that its holding did not foreclose a veteran exposed to radiation from establishing service connection on a direct basis; such a veteran could still demonstrate that his or her disability was related to active service without regard to the radiation exposure.

We do not oppose the intent of this provision. However, following the introduction of this bill, the Secretary reviewed the policy underlying the regulation which was upheld by the court in *Combee*, and I am pleased to report that he has decided that the regulation should be revised. Accordingly, we will soon be proposing an amendment to our regulation that will permit a veteran to establish direct service connection for disability resulting from a disease claimed to be caused by radiation exposure even if that disease is not included in the list of diseases VA already recognizes as radiogenic.

As a result, we would prefer to resolve this issue through the regulatory process and see no need for this legislation.

There is also a technical problem with the bill with respect to its inclusion of dioxin exposure. Section 10 of the Agent Orange Act of 1991, Public Law 102-4, deleted the dioxin provisions of Public Law 98-542.

S. 1907

S. 1907 would require VA to allow those claims for compensation under 38 U.S.C. § 1151 that could be allowed under VA's regulation implementing § 1151, which was invalidated by the United States Court of Veterans Appeals in *Gardner v. Derwinski*, 1 Vet. App. 584 (1991), *aff'd sub nom Gardner v. Brown*, 5 F.3d 1456 (Fed. Cir. 1993).

This bill would require VA to do something that we are already doing. We have instructed our regional offices to continue granting claims under 38 U.S.C. § 1151 that would have been granted under the pre-*Gardner* interpretation of the statute. We are unaware of any failure to comply with our instructions. We see no need for legislation to enforce our instructions. We therefore do not support enactment of this bill.

S. 1908

S. 1908 would require the Administrative Conference of the United States to study and report on VA's system for disposing of claims for veterans' benefits to determine and improve the system's efficiency and reduce the number of pending claims. It would require the Administrative Conference to provide opportunities for consultation with representatives of veterans service organizations and other entities that represent veterans before VA. The Secretary would be required to submit to the Conference information necessary to carry out the study, including various statistics specified in the bill.

We have no particular objection to such a study, provided its focus is on the handling of compensation and pension claims, and in fact believe that an "outsider" looking in may provide important insights. However, the report required by this bill seems to be unnecessarily complex and comprehensive. Much of the data the bill would require us to share with the Administrative Conference would be difficult to obtain. For example, some of the requirements would necessitate a manual review of some 15 million claims records within the 90-day period required by this bill. We would welcome the opportunity of working with your staff to draft a more workable proposal. We also estimate that the final report of the Administrative Conference would not be submitted until late 1995 or early 1996, and its effects not fully assessed or implemented until 6 or more months later. The results of any changes implemented would not be readily apparent until 1997 at the earliest. This is a long time to wait for any improvements intended to result from the study. In the meantime, we will continue with our own current initiatives to modernize and streamline our work methods. We have strong hopes for these initiatives and expect to see their impact within the next year.

This bill is consistent with a recommendation made by the blue ribbon panel to the effect that an outside organization undertake a comprehensive review of existing adjudication regulations and procedures to make them more efficient, clearer, and easier for both adjudicators and claimants to understand and follow. Certainly no review of the adjudication process would be complete without the review recommended by the blue ribbon panel. We would be willing to work with the Committee to ensure that this integral element of a complete review is included in the legislation.

In addition, the Secretary has recently chartered the Select Panel on Productivity Improvement for the Board of Veterans' Appeals. This panel, under the leadership of Mr. Guy McMichael, currently Chairman of the Board of Contract Appeals and formerly VA General Counsel and General Counsel to this Committee, has been given a very specific task: to conduct a systemic review of the Board of Veterans' Appeals and to make recommendations regarding the mission, structure, and operations of the Board which will result in a more timely processing of appeals for claimants. Included in this Panel, in addition to VA personnel, will be representatives of various veterans' service organizations. We hope to have recommendations from the Panel within the next few months.

PREPARED STATEMENT OF CARROLL WILLIAMS, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman, The American Legion appreciates the opportunity to comment on proposed legislation on a variety of issues.

With regard to S. 677, this measure would authorize the establishment on the grounds of the Edward Hines, Jr. VA Medical Center, Hines, Illinois, a facility to provide temporary accommodations for family members of severely ill children being treated at the nearby Loyola University of Chicago Medical Center. The American Legion is not opposed to this proposal.

The American Legion is always at the forefront in support of any type of joint ventures that entail involvement with public, private, and not-for-profit entities working together for the betterment of the local community. In this instance, the VA medical center and the Loyola University Medical Center, together with over 500 local volunteers, have worked closely with the McDonald's Corporation to place a Ronald McDonald House called the "Caring Place" on the grounds of the Loyola/Veterans Affairs medical complex. This would enable the parents of severely ill infants and children who suffer from cancer, spina bifida, blood disorders, heart disease, and head and spinal injuries to be temporarily housed close by their severely ill children during treatment at the Loyola University Hospital.

Mr. Chairman, The American Legion believes in addition to providing a "Caring Place" for the parents of these seriously ill children that, in return for the use of the VA property, some part of the facility should be expanded to temporarily accommodate families of seriously ill veterans hospitalized at the Hines VA Medical Center. Many of these veterans are being treated for serious conditions which may require their immediate families to be close by. Many of these family members are unable to afford the high cost of lodging at local hotels. This dual-use "Caring Place" would serve the needs of families of severely ill children and the families of ill veterans being treated at the Loyola/Hines VA Medical Center complex by making affordable quarters available for those wishing to be close to their loved ones. This type of facility would be similar to Fisher Houses which are available to the family members of service personnel undergoing treatment at several active duty military facilities.

S.789 would provide that future increases in the monthly amount paid by the State of New York to certain veterans be excluded from the determination of annual income for VA pension purposes. The American Legion has no official position on this matter.

Mr. Chairman, S. 792 would amend the beginning date of the Vietnam Era, as set forth in 38 U.S.C. 101(29), from August 5, 1964 to December 21, 1961 for veterans benefits purposes.

The law currently recognizes that a veteran who served in the Republic of Vietnam during the Vietnam era will be presumed to have been exposed to Agent Orange or other dioxin-containing herbicides for the purpose of establishing entitlement to presumptive service connection for certain diseases related to herbicide exposure. However, the statute does not reflect the fact that the Agent Orange spraying program preceded the date formally recognizing our involvement in the conflict in Vietnam.

Since the late 1970's, The American Legion has been in the forefront on the issue of the long-term health effects of Agent Orange. Consistent with our continuing efforts to ensure that any veteran who may have been exposed to Agent Orange in Vietnam and who may have developed a disease which may be related to exposure to the herbicide are properly cared for and compensated, the 1992 National Convention of The American Legion adopted a resolution setting forth its policy on Agent Orange. Among other things, this resolution calls for the enactment of legislation eliminating the requirement that service in Vietnam for the purpose of presumption of service connection for diseases associated with exposure to certain herbicide agents must have been during the Vietnam era.

Mr. Chairman, to this extent, we are prepared to support the proposal to change the beginning date of the Vietnam era to December 21, 1961. The American Legion does not have an official position on any other benefits which may be affected by this proposed change.

S. 1626 proposes two amendments to VA's home loan program.

38 U.S.C. 3702 would be amended to provide that in computing the aggregate amount of guaranty or insurance housing loan entitlement available to a veteran, the Secretary may exclude the amount of the guaranty or insurance housing loan entitlement used for any guaranteed, insured, or direct loan, if the loan has been

repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on such loan, that the loss has been repaid.

The American Legion is very concerned by the restrictions that would be imposed under this proposal. The amendment to section 3702 eliminates the current provision which takes into consideration, for the purpose of computing the aggregate guaranty amount, circumstances where the veteran has disposed of the property which secured the loan and when the property has been destroyed by fire or other natural disaster. This proposed change clearly bars circumstances where the veteran's home has been devastated which would impose a further economic hardship on the veteran. It would also bar restoration of guaranty entitlement in instances where the veteran's due process rights were abridged by VA in the foreclosure action on property previously disposed of by the veteran without a release of liability. The 4th Circuit Court held in *U.S. v. Whitney* that the veteran should not be held liable for any loan deficiency where due process was not afforded the veteran by VA in the foreclosure action. As a result, VA has been required to "write off" or waive the veteran's indebtedness and clear the veteran's credit history. We would point out that VA did not appeal *Whitney*.

VA, however, based on an opinion from its General Counsel, will only provide a partial restoration of the veteran's home loan guaranty entitlement. The American Legion believes the intent of the *Whitney* decision is that affected veterans should be made whole in relation to benefit eligibility, including VA home loan guaranty. We would, therefore, be strongly opposed to the proposed restrictions in S. 1626 and hope that this Committee would consider legislative action making full restoration of VA home loan guaranty entitlement a statutory requirement for those veterans whose VA home loan debt was written off or waived pursuant to *U.S. v. Whitney*.

This measure would also amend 38 U.S.C. 3710 to include authority for VA guaranteed loans for the purpose of refinancing an existing guaranteed loan to make energy efficiency improvements to the dwelling. The American Legion has no opposition to this proposal.

Mr. Chairman, the following five bills relate to VA's claims adjudication and appeals process.

S. 1904 proposes several amendments to 38 U.S.C., chapter 71 - Board of Veterans' Appeals - for the purpose of improving the organization and procedures of the Board of Veterans' Appeals.

Section 1 of this measure would amend 38 U.S.C. 7101 to remove the statutory limitation on the number of members which may be appointed to the Board. It would remove the statutory limitation on the number of Board members with respect to the Chairman's authority to appoint acting members of the Board while retaining the present 270 day limitation on the amount of time an individual may serve as an acting member during any 1-year period. It would also require the number of employees who served as acting Board members and the number of cases in which each such member participated to be included in the Secretary's annual report to Congress relative to the Board's activities.

The American Legion has no objection to these proposed amendments.

This measure would completely revise 38 U.S.C. 7102 to allow the Chairman of the Board of Veterans' Appeals to assign an appeal to a single member or a panel of not less than three members.

The purpose of the proposal authorizing single member decisions is to expand the number of decision-makers on the Board thereby increasing the number of decisions completed by the Board each year. The Board estimates an overall productivity increase of about 25 percent.

Mr. Chairman, The American Legion has expressed support for a similar measure in testimony last year and this year before the House Veterans Affairs Committee. In the meantime, the backlog of appeals pending at the Board has continued to grow at an alarming rate. There are today in excess of 40,000 claims files physically at the Board of Appeals. The Board's response time is, as of the end of February 1994, projected to be 685 days - one year and eleven months. We believe this situation constitutes a very real crisis by any definition or standard. It is an operational crisis for the Board, but more importantly, it is a personal crisis for veterans who are being forced to wait years for a decision. The enactment of this measure will allow the Board to begin the slow process of reducing the backlog of pending cases and improving its response time.

However, the Legion's support for this proposal is tempered by its current concern with the limited resources being devoted to the Board's quality review or quality

assurance function whereby decisions prior to their release are reviewed for consistency, content, and legal correctness. With single signature authority and the resulting increase in the number of decisions issued by the Board, we believe it is imperative that the Board have the additional staffing resources necessary to upgrade and improve the quality assurance program to meet the higher production level.

The measure would also completely revise 38 U.S.C. 7103 to provide for reconsideration and the correction of obvious error. This change would propose that a decision of a Board member or panel of members is final, unless the Chairman orders reconsideration of the case. Reconsideration shall be made by a panel of not less than three members other than the member who previously decided the case. There is provision for expanding the panel where necessary. In addition, the Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

The American Legion supports this provision. However, we recommend that the Chairman, in denying a request or motion for reconsideration including contentions of clear and unmistakable error, be required to provide reasons and bases and that such decision by the Chairman be reviewable by the Court of Veterans Appeals. Such review by the Court should include decisions of the Chairman or panel of members denying that a previous Board decision contained clear and unmistakable error, even though no Notice of Disagreement has been filed as to the claim of clear and unmistakable error.

With respect to the docketing of appeals, the bill would propose to amend 38 U.S.C. 7107 to provide that all appeal cases shall be considered in docket order. A case may be advanced on the docket for cause shown. It also provides that the Board shall decide any appeal only after affording the appellant an opportunity for a hearing either in Washington, DC, at a VA regional office, or by alternative means, i.e. teleconferencing or video, or other equipment.

S. 1905 includes several proposals to change and improve the claims adjudication process.

The measure would amend 38 U.S.C. 1506 to require that a pension applicant or recipient shall notify VA where there is a material change in their annual income, instead of filing an annual income report.

The measure would authorize VA to accept the written statement of a claimant as proof of the existence of a marriage, dissolution of a marriage, birth of a child, or death of a family member in a claim for VA benefits. The claimant may be required to submit documentation of such statement if the statement on its face raises some question as to its validity.

The bill would also authorize VA to accept a medical examination report from a private physician in support of a claim for disability compensation or pension benefits. Such evidence would not require confirmation by a VA physician, if it contains sufficient clinical data to support the diagnosis of a disability or to provide a reliable basis for an evaluation of the claimed disability.

It would also require that not later than 90 days after enactment the Secretary of Veterans Affairs is to report to the Congressional Committees on Veterans Affairs on the status of an agreement between VA and the Department of Defense to provide for the immediate transfer of service medical records from the Department of Defense to VA of those members of the Armed Forces separating from active duty.

Mr. Chairman, The American Legion has several concerns with respect to these proposals.

The processing of the currently required annual eligibility verification reports (EVR's) is very labor intensive and time consuming. The verification of income information can now be accomplished through VA computer matching programs with the Social Security Administration and Internal Revenue Service. The claimant is still required to notify VA of any material change in their income or dependency. VA, however, would retain discretionary authority to require the submission of an annual income report. This change will allow VA to reallocate personnel resources currently assigned to this task to processing other types of claims.

We believe the proposed change to allow the acceptance of a claimant's written statement rather than a certified copy of documents such as marriage and birth certificates, divorce decrees, as evidence of a marital relationship or dependency is a small, but nonetheless, important step toward helping the regional offices improve the timeliness of the claims adjudication process.

The VA blue ribbon panel recognized that the current certified document requirement often causes problems for many veterans which tends to slow down the submittal of this type of evidence. This problem, in turn, delays regional office action on the claim. The Panel included a recommendation that VA regulations be revised to allow the acceptance of photocopies of documents for the purpose of establishing entitlement to certain benefits. Pursuant to that recommendation, VA will soon be publishing a proposed regulatory change providing for the acceptance of photocopies of marriage and dependency documents.

Mr. Chairman, we would like to see the provision in S. 1905 modified to specify that photocopies of the type of documents in question will be accepted rather than a claimant's statement. Photocopying documents would not pose a problem for any claimant and this would permit a more in-depth review of such evidence by VA. By contrast, a claimant's written statement may not provide all of the necessary information and have the unintended effect of increasing rather than decreasing the work of the regional office.

Mr. Chairman, on February 1, 1994, VA published a proposed regulation in the Federal Register amending 38 CFR 3.326 to provide that for the purpose of establishing entitlement to certain benefits a statement from a private physician would be accepted in lieu of an examination by a VA physician. The private physician's report must include sufficient clinical data to support the diagnosis or permit the evaluation of the disability in question.

We support both the change underway in the VA's regulations and the proposed statutory authority permitting VA to adjudicate a claim based on a private physician's medical report. This provision should have the effect of reducing the delay and workload associated with the VA examination process at both the regional office and medical center and permit earlier adjudicative action on the claim.

Mr. Chairman, it is our understanding that the procedures necessary for the routine transfer of the service medical records of all separating military personnel from the Department of Defense to VA have been agreed upon and the program will, in a matter of weeks, be in effect for all services. In late 1992, the Department of the Army began forwarding the service medical records of all new Army dischargees directly to VA from the Army separation centers. By the end of April 1994, the service medical records of newly discharged Navy, Marine Corps, Air Force and Coast Guard personnel will be routinely transferred to VA. In its first year and a half of operation, VA's Service Medical Record Center has received the medical records of over 130,000 individual veterans and referred some 17,000 of these to the regional offices for claims processing. The improved accessibility of these records has helped reduce delays in adjudicating claims for service connection. In light of the fact that the transfer program is now in operation, the proposed reporting requirement is, in our view, now unnecessary.

In regard to S. 1906 relating to the adjudication of VA claims based on exposure to radiation, The American Legion fully supports this Committee's efforts on legislation to provide that service connection for disabilities arising from exposure to ionizing radiation or dioxin can be established by direct evidence. This bill would amend the provisions of Public Law 98–542 so as to repeal the decision of the U.S. Court of Veterans Appeals in *Combee v. Principi.*

In *Combee,* the Court held that a veteran may not establish direct service connection for a condition based on radiation exposure unless the condition is on VA's list of presumptive radiogenic diseases. Mr. Chairman, The American Legion concurs with this proposed legislation and believes that VA's list of presumptive radiogenic diseases is far too restrictive. It effectively prohibits those veterans who were exposed to ionizing radiation and who subsequently develop a condition which may be related to such exposure from establishing service connection because the condition does not happen to be included on VA's presumptive list of radiogenic diseases.

To further address the dioxin exposure provisions of this proposed legislation, we believe that the current VA regulation is also too restrictive. It effectively prohibits the granting of service connection to those veterans who were exposed to dioxin and who subsequently develop a condition which may be related to dioxin exposure because the condition is not on VA's list of presumptive diseases associated with exposure to certain herbicides.

Mr. Chairman, the Secretary of Veterans Affairs on February 4, 1994 expanded the list of presumptive herbicide diseases to include Hodgkin's disease and porphyria cutanea tarda (PCT). The American Legion believes that additional disabilities such

as respiratory cancers, prostate cancer, additional soft tissue sarcomas, and multiple myelomas which may be related to herbicide exposure warrant recognition as being service - connected. We further believe that VA should move to award service connection to our deserving veterans who are afflicted with these diseases. They have waited long enough.

Mr. Chairman, with respect to S. 1907, this proposal requires the Department of Veterans Affairs to adjudicate and resolve those cases, 38 U.S.C. 1151 - Benefits for Persons Disabled by Treatment or Vocational Rehabilitation, currently held in abeyance, that could have been granted under the standard used by VA prior to the decision in *Gardner v. Derwinski*. The American Legion fully supports this bill.

Mr. Chairman, there are an estimated 6000 cases pending at the VA regional offices and at the Board of Veterans' Appeals that have been held in suspense pending the final resolution of *Gardner v. Derwinski*. Many of these veterans have been waiting several years for a final decision in the *Gardner* case in order that their claims under section 38 U.S.C. 1151 can be properly adjudicated by VA.

In its 1991 decision on *Gardner*, the Court of Veterans Appeals (CVA) determined that VA's regulations under 38 CFR 3.358 were more restrictive than the provisions of the statute and invalidated that particular provision of the regulation requiring that the veteran prove the additional disability claimed was due either to an accident or fault on the part of VA. At that point, VA placed a moratorium on all unfavorable actions on section 1151 claims. VA appealed the CVA decision to the U.S. Court of Appeals for the Federal Circuit which affirmed the lower court's decision. In January 1994, VA filed a petition for certiorari with the U.S. Supreme Court which is currently pending.

Mr. Chairman, The American Legion receives a daily flood of inquiries from veterans whose claims under this provision of the statute are currently pending adjudicative action. Many are seriously disabled and because of the delay are in severe financial need. We welcome your timely efforts in prompting VA to take action on these claims. This action will eliminate further delay in adjudicating many pending section 1151 claims caused by VA's moratorium on action while waiting on a decision by the Supreme Court on the issue of entitlement to VA compensation for disability due to VA medical treatment.

S. 1908 proposes that the Administrative Conference of the United States conduct a comprehensive 18-month study of VA's claims adjudication and appeals processes and procedures.

This study would consider the historical development and evolution of the current system, including the impact of the Veterans' Judicial Review Act of 1988. It would also address such issues as - the claims adjudication process; the scope and nature of VA's duty to assist claimants in the development of their claims; the scope and nature of reviews and all hearings conducted at each step in the adjudication process; the number, grade, experience and qualification of persons undertaking such review; application of the "benefit of the doubt" rule; submittal of new evidence; VA's computer modernization program; the effect on the system by attorneys, service organization representatives, and other veteran advocates; the effect on the system of any work performance standards utilized by the regional offices and the Board of Veterans' Appeals; the implementation of the recommendations of the VA Blue Ribbon Panel on Claims Processing; the effectiveness of any pilot programs being carried out by VA and of any efforts to implement such programs system-wide; and the effectiveness of VA's quality control and quality assurance practices. This proposal includes provision for consultation with representatives of the veterans service organizations and other groups representing veterans.

The final report on the study would include the findings and conclusions of the Administrative Conference together with recommendations for improving the current claims adjudication and appeals process.

The American Legion is prepared to support the mandate for a comprehensive study of VA's adjudication and appeals process and procedures and its many problems by an organization such as the Administrative Conference of the United States. However, Mr. Chairman, we believe it should be made perfectly clear that the intent and purpose of this proposal is to review and recommend improvements in the existing claims processing system and not as a basis for eliminating or restricting veterans' benefits.

S. 1927 would provide a cost-of-living adjustment (COLA) in veterans' disability compensation and survivor's dependency and indemnity compensation (DIC) benefits,

effective December 1, 1994. The percentage increase in benefits would be the same as the December 1, 1994 cost-of-living adjustment in Social Security (SSA) and VA pension benefits which the Congressional Budget Office estimates will be 3.0 percent.

The American Legion supports the proposed cost-of-living adjustment in compensation benefits for service disabled veterans and the survivors of those who died in service or of service related causes. We have expressed support for similar periodic adjustments in the past as being both necessary and fair in ensuring the economic support provided service disabled veterans and their survivors by VA keeps up with the increased cost of living.

Mr. Chairman, we wish to commend you for your continuing efforts and those of this Committee in ensuring that the needs of disabled veterans and their families are recognized and met. In addition, we are relieved that this proposal does not seek to automatically index future disability compensation cost-of-living adjustments to any adjustment in the benefits provided for Social Security and VA pension recipients. We take this opportunity to restate our continuing opposition to the concept of indexing the disability compensation COLA to the SSA COLA. Our position in this matter is based on the fact that hearings on proposed adjustments in disability compensation and DIC benefits before the House and Senate Veterans Affairs Committees provide an important and necessary forum in which issues related to the needs of service disabled veterans and their families can be presented for discussion. We believe this valuable opportunity would be lost, if future compensation and DIC COLA's were to be automatically indexed to adjustments in SSA benefits.

In conclusion, Mr. Chairman, The American Legion has been very concerned by the growing backlog of cases pending in the regional offices and at the Board of Veterans' Appeals. As we previously stated, this situation is a crisis for VA and for veterans. Over the past several years, we have been an active participant in the search for solutions to the problems which hinder and restrict timely action on veterans' claims. Most recently, The American Legion took part in VA's Blue Ribbon Panel on Claims Processing. We believe the implementation of recommendations of the Panel will over time help improve the timeliness and quality of the decisions on VA claims and reduce the backlog of pending claims. The Legion also plans to implement several initiatives to improve the level of service being provided by American Legion service officers.

Mr. Chairman, that concludes our statement.

PREPARED STATEMENT OF MICHAEL F. BRINCK, NATIONAL LEGISLATIVE DIRECTOR, AMVETS

Mr. Chairman, thank you for holding this hearing on several bills to improve the delivery of veterans benefits. AMVETS is grateful for the opportunity to present our views on these bills.

Mr. Chairman, S. 677 proposes to place a Ronald McDonald house on the grounds of the Hines VA medical center in Chicago, and we support the bill because it is a fine example of how veterans continue to assist their communities.

The second bill you have requested us to address is S. 789, a bill that would exempt payments made by the state of New York to 100 percent disabled, blind veterans from VA pension income computations.

Mr. Chairman, S. 792 proposes to redefine the statutory date for the beginning of the Vietnam era from the current August 5, 1964 back to December 22, 1961. According to the Army History Center, that is the date casualty statistics for the Vietnam war begin to accrue with the death of Specialist 4th Class James Davis in an ambush of an Army radio direction finding unit. Therefore, AMVETS supports the bill on the grounds that three years of casualties certainly justifies adjustment of the date.

S. 1626 makes several changes in the VA home loan guaranty program and we support the bill.

Mr. Chairman, you have introduced five bills relating to the adjudication of veterans benefits. We will begin with S. 1904. First, the bill would remove the 65 member limit of the Board of Veterans' Appeals (BVA) and allow the chairman to appoint temporary members to the board for short periods. We support those provisions. Next, the bill would establish new review procedures including single member boards and multiple member reconsideration boards. We support those provisions. The bill also defines personal hearing and docket procedures, and we support those provisions with the understanding that docket procedures should not prevent the chairman from efficiently scheduling the travelling board members'

itineraries. Mr. Chairman, with the huge caseload backlog facing BVA we support the bill.

S. 1905 will also help speed the adjudication process. First, it lessens the burden of proof in terms of documentation of dependency issues affecting benefits claim and payments. This is long overdue. With VA's current authority to cross-reference data from other government agencies, such paperwork is only an anachronistic bottleneck. We also enthusiastically support acceptance of competent exams done by private physicians as the basis for a claim for VA benefits. If a veteran is willing to bear the cost of an exam, and the exam provides adequate data on which to adjudicate a claim, then VA should not look the gift horse in the mouth. We understand the concerns of those who fear veterans will "shop" for a doctor who will ensure the exam will provide the "right" answer. But the government has sufficient remedies to prosecute fraud. It is time to shift the bureaucracy's presumption from one of denial to one of approval, and this should help.

Finally, S. 1905 requires the VA and DOD to get moving towards an agreement on the automatic transfer of medical records of all separating service members. We also strongly support that provision.

Mr. Chairman, it is truly unfortunate that some bureaucrats will attempt to construe regulations in a manner that prevents veterans from receiving compensation for the effects of weapons whose long-term effects we little understood at the time of use. Certainly, exposure to chemicals and ionizing radiation meets the definition of uncertainty over time. Therefore, we applaud S. 1906 provisions to further define the intent of Congress as to the validity of claims related to the use of those weapons and to further define the intent of Congress regarding service-connection by direct evidence.

S. 1907 seeks to require VA to adjudicate veterans medical malpractice claims filed under 38 U.S.C. 1151. We fully support the bill and its intent to ensure malpractice claims are processed by VA.

It is well past time for a full analysis of the adjudication system. Therefore, we support S. 1908. We especially appreciate the opportunity it offers for veterans service organizations to participate.

S. 1927 would provide cost of living (COLA) raises at the same rate as increases provided to Social Security recipients. While we certainly support increases for compensation and DIC recipients, AMVETS national resolutions call for delinking compensation and DIC raises from the general inflation rate because of the extraordinary expenses often incurred by this segment of society.

Mr. Chairman, we are quite pleased by this collection of bills before the committee today and urge adoption where we so indicated. We have one final suggestion.

We all know that reduction of the backlog will require significant change in the way the adjudication process works. AMVETS would like to suggest consideration of a pilot program that would essentially apply a clean slate approach to adjudication. We envision a process that would empower claimants, consolidate functions and reduce regulation while retaining due process rights. While we do not specifically endorse any of the following suggestions, some test features might include:

- Make professional pro bono representation more feasible by establishing a veterans law curriculum at a DC area law school. Provide tuition assistance for those successfully completing the course.
- A bottom line cost analysis comparing the total cost to the taxpayer of the current system of many filters and gatekeepers versus a system that would grind less finely, but more quickly.
- Broadening the acceptance of sources of evidence and opinion.
- Set up a parallel adjudication process (including full disclosure and the right of choosing to use the old process) to test some or all of the following:
- Modify the traditional Regional Office-BVA-Court of Veterans Appeals (COVA) structure in favor of an "enhanced Regional Office-COVA design.
- Combining/co-locating Regional Office adjudication and BVA functions under the Chairman of BVA.
- Assign a COVA-employed judge(s) to each Regional Office to function as a hearing officer empowered to make final pre-COVA decisions. Hearings would allow the claimant, the claimant's representative (if any), and the adjudicator of record to present arguments supporting the basis for appeal and the grounds

for the original decision. This would force those who make decisions on claims to face the claimant and justify their decision. No longer could poor-performing, faceless bureaucrats hide behind a mask of anonymity. Further, in cases where the judge felt the decision was flawed due to unprofessional performance or bias, the judge should be empowered to place an appropriate letter of reprimand in the employee's personnel jacket as the basis for future personnel actions.

- Direct appeal to COVA.

Thank you again for seeking our views, and we look forward to working with the committee on these and other veterans issues.

RESPONSE FROM MICHAEL F. BRINCK, NATIONAL LEGISLATIVE DIRECTOR, AMVETS, TO QUESTION BY CHAIRMAN ROCKEFELLER

AMVETS
NATIONAL HEADQUARTERS
Lanham, MD, April 5, 1994.

Hon. JOHN D. ROCKEFELLER IV
Chairman, Committee on Veterans' Affairs
U.S. Senate, Washington, DC.

DEAR SENATOR ROCKEFELLER: During the March 24 hearing regarding several bills, I stated that while AMVETS supported an independent study of BVA, we did not support using the Administrative Conference of the U.S. (ACUS) to conduct the study. I was unable to answer your question asking for a specific reason why we did not want ACUS to do the study, and I offered to provide the answer for the record.

AMVETS opposes funding ACUS for the study because they have consistently opposed application of veterans preference in some sectors of federal employment—specifically, in the area of administrative law judges. I believe the DAV did an analysis of the data presented by ACUS and found it to be significantly flawed.

Therefore, we do not believe that it would be appropriate to employ ACUS to do a study where they would (a) have an opportunity to skew conclusions to support their past biases and (b) be financially rewarded in spite of their past non-support for veterans employment.

As always, AMVETS thanks you for your aggressive advocacy for veterans and we look forward to working with you in the future.

Sincerely,
Michael F. Brinck, *National Legislative Director.*

PREPARED STATEMENT OF RICHARD F. SCHULTZ, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and members of the Committee:

On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, may we say that we deeply appreciate being given this opportunity to present our views on legislation that would authorize an increase in the service-connected disability and death compensation entitlements of our nation's veterans and survivors.

We are also pleased to present our views on several bills currently pending before the Committee.

At the outset, Mr. Chairman, I wish to commend you, Ranking Minority Member Senator Murkowski, and all members of the Committee for your decision to give hearing consideration to the issues contained on today's agenda. Clearly, actions taken by the Committee will materially affect the lives of our nation's veterans and their families.

S. 1927

Mr. Chairman, introduced by yourself and cosponsored by Senator Murkowski and all members of the Committee, this measure directs the Secretary of Veterans' Affairs to increase the basic rates of VA service-connected disability and death compensation, as well as the dependency allowances and the statutory awards which apply to these two programs. In addition, the annual clothing allowance provided to certain veterans would also be increased. Under the terms of this measure, these across-the-board

adjustments shall take affect December 1, 1994, and shall be equal to the same percentage rate of increase that is awarded to Social Security beneficiaries (effective the same date) under title 2 of the Social Security Act, as determined under section 215(i) of such Act.

Mr. Chairman, I do wish to express the DAV's appreciation for the provision of S. 1927 which requires that, in the computation of increased rates, amounts of fifty cents or more shall be rounded up to the next highest dollar amount and amounts less than fifty cents shall be rounded down to the next lower dollar amount. We prefer this method as opposed to the rounding down of all computations that are not even dollar amounts.

I also want to note that in its provisions, S. 1927 does propose to increase the "K" award as set forth in section 1114(k), title 38 U.S.C. This is a special monthly benefit—presently $70.00—paid in addition to the basic rates of compensation to certain veterans who incurred a service-connected loss, or loss of use of, a single extremity or certain other body organs or functions.

This particular award, though last increased to its present amount in 1992, has only been infrequently included in prior compensation bills over the years. We, therefore, do thank the Committee for including the "K" award in the pending measure.

Mr. Chairman, if enacted, this measure would help restore the buying power of service-connected disability and death compensation payments lost due to inflation since compensation rates were last increased on December 1, 1993. The DAV, therefore, strongly supports the enactment of S. 1927.

Mr. Chairman, because the DAV represents veterans at every level before the VA, at the United States Court of Veterans Appeals and at the United States Court of Appeals for the Federal Circuit, we are provided with the unique opportunity to observe the entire system first hand and close up. Our professional staff of National Service Officers (NSO's), National Appeals Officers (NAO's), and Judicial Appeals Officers (JAR's) provide us with abundant information, not only on the problems associated with the adjudication and appeals processes, but also on new initiatives and procedures which are working well to improve the current system. One such initiative being conducted at the New York City Regional Office is enthusiastically supported by DAV's National Service Office Staff at that Regional Office and will be discussed in more details later in this testimony.

As you know, Mr. Chairman, the mission of the VA is to serve America's veterans and their families with dignity and compassion, acting as their principle advocate and ensuring that they receive the care, support and recognition earned in service to this nation. In the VA's own words, "proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government." 38 C.F.R. section 3.103(a).

Mr. Chairman, during the past decade, we have witnessed a steady decline in VA's ability to provide America's veteran population with quality benefit determinations in a timely manner. The President's FY 1995 Budget continues this trend of employee cuts. In addition, the current downsizing of our nation's military is further compounding VBA's benefits delivery problems.

Mr. Chairman, we are encouraged by VA management's willingness to explore new and innovative ways to process veterans' compensation and pension claims. Their recognition that we cannot continue to "do business as usual" is evident by the scope and variety of VA adjudication pilot projects. An effort must be made to continue to foster even more Regional Office innovation to improve the delivery of compensation and pension to veterans and their families.

For example, in looking at ways to redesign the claims process, the New York City Regional Office is participating in an OMB/White House initiative. This initiative—recently recognized by Vice President Gore for its innovative approach to reinventing government—will set up a case management/ self-directed work team of highly trained individuals who would share responsibility for all aspects of claims development and adjudication.

Mr. Chairman, we are very enthusiastic about the positive impact this program will have on the way the VA does business. By the VA's own admission, under the old system of assembly line adjudication, "success is measured by the number of claims you move off your desk." It makes no difference that these claims are shuffled from desk to desk and hand to hand without anything of substance being accomplished.

There is no pride in ownership because there is no ownership of that claim or the final product. However, the new initiative is changing this measure of success. Group performance standards will replace individual performance standards for the most part, and there will be accountability established for the final product. This new initiative will also allow the group to review the process from within and to request "waivers" of those procedures which do not benefit the claimant. In their words, "if it doesn't add value to the process—get rid of it." We believe this is a healthy attitude to have.

Mr. Chairman, the team management concept essentially establishes small, manageable "regional offices" within a large regional office, and it more effectively utilizes the available talent. This new process limits the number of people necessary to handle a claim on an assembly line basis and reduces the number of errors that are made when a vast number of people must handle the claim at various stages of the adjudication process. Under the team management concept, every aspect of the claim is handled within the designated unit. This unit is responsible for everything that goes on in that case beginning with the incoming mail, to contact with the veteran, to the case development, and finally to the adjudication of that claim.

Our New York City National Service Officers are enthusiastic about what has taken place over the last six months with respect to this management/self-directed work team concept. They are extremely confident that this new approach will revolutionize the New York City Regional Office and its claims adjudication process. I personally believe, based on my observations, that this new initiative is a win-win situation. Not only will the veteran benefit from this initiative, but the VA will certainly reap benefits also. The VA employees involved in this initiative will no doubt develop an esprit de corps and pride in what they have been able to accomplish. It was obvious during my brief visit that these elements were already developing.

Another innovative approach to solving Regional Office timeliness problems is taking place at the Portland, Oregon office. In looking at ways to speed up the claims process, they are currently testing ways to combine certain functions of the adjudication and veterans' services divisions.

Within the VA, the Board of Veterans' Appeals (BVA) is charged with the responsibility of ensuring that a claimant has not been denied benefits to which he or she is entitled to receive. The BVA renders decisions on a claimant's appeal from the RO's adverse determination which are based on the entire evidence of record, in light of all applicable laws and regulations and the controlling precedent of Court of Veterans' Appeals (COVA) decisions. It is the BVA's expressed objective to decide cases on a timely and consistent basis and to issue quality decisions in compliance with statutory and Court requirements. Unfortunately, the BVA is unable to currently meet its objective, as witnessed by the soaring backlog of appeals pending at the Board.

Mr. Chairman, we wish to note here that in compliance with the President's Executive Order that all departments and agencies focus their efforts on customer service, the BVA has convened a forum to look at their operation. A member of DAV's National Legislative Department is participating in this forum.

Mr. Chairman, DAV is pleased with the legislation introduced by yourself and other members of this Committee. We are encouraged by this legislation and we believe that it will assist the VA in overcoming many of the obstacles it now faces in the adjudication and appeals procedures. These bills will allow the VA to move forward in attacking its current problems and backlog and it will also assist veterans in obtaining the benefits and services they have earned in their service to this nation.

S. 1904

Mr. Chairman, S. 1904 was introduced in the Senate on March 8, 1994, by yourself and several original cosponsors from this Committee, including Ranking Minority Member Senator Murkowski and Senators DeConcini, Graham, Akaka, and Daschle. This bill proposes to improve the organization and procedures of the BVA.

The DAV stands in strong support of this legislation and we are delighted to see that it has the bipartisan support of this Committee. Delays at the BVA have become unconscionable and intolerable. There is no valid reason why a claimant must wait four to six years to receive a determination on an appeal, particularly in light of the fact that the majority of these cases will be remanded to the agency of original jurisdiction for further development or readjudication.

Mr. Chairman, DAV supports the provisions of this bill which would eliminate the cap on the number of board members and would allow the Chairman to designate individuals at the BVA as acting members of the Board.

DAV also supports the provisions of the bill that would allow for single member decisions, for reconsideration of decisions and for the correction of obvious errors.

Mr. Chairman, we have a technical correction we would like to note in section 1 of S. 1904. Section 7103(d) states: The Board on its own motion may correct an obvious error...." Pursuant to section 7101 of title 38, United States Code, the term "Board" refers to the Chairman, Vice Chairman and the members. While the language noted above is the same as currently contained in 38 U.S.C. section 7103(c), use of the term "Board" is ambiguous. It would be less ambiguous if the phrase was expanded to include "a member or panel of the Board," so that the provision might read: an obvious error in the record *shall* be corrected, without regard to whether there has been a motion or order for reconsideration, by a motion of a member or panel of the Board."

Finally, Mr. Chairman, DAV endorses the provisions of this bill that allow for a hearing to be conducted through voice transmission or other means without infringing upon the claimant's right to have a personal hearing if he or she so desires. We also support the provisions pertaining to docketing of appeals to the BVA. We would hope that language could be included in this provision or in the legislative history to express the intent of Congress that cases can be advanced on the docket where it is shown that the appeal cannot be decided by the BVA due to a procedural defect, the need for additional development or readjudication by the agency of original jurisdiction. In this way, cases so identified could be remanded to the agency of original jurisdiction at the first available opportunity, instead of being held in storage for years before being reviewed and remanded.

Mr. Chairman, we ask that your Committee consider restoring the authority of the Chairman and Vice Chairman to grant administrative allowances of an otherwise final, unfavorable determination on the basis of difference of opinion. A claimant should also be entitled to appeal an administrative allowance to the United States Court of Veterans Appeals if the allowance should have been based on obvious error in the prior determination and not on the basis of difference of opinion.

S. 1905

DAV enthusiastically supports all of the provisions of this bill which would help VA to achieve some immediate improvement in its adjudication system. It is our belief that the measures contained in this bill will have a positive impact upon the adjudication process.

The elimination of the requirement for the annual income questionnaires (Sec. 1) and the immediate transfer of military service medical records to the VA (Sec. 4) are long overdue. These provisions will certainly assist the VA in providing timely benefits and services.

The provisions of section 2 will be instrumental in providing for the expeditious handling of claims. In many cases, the VA is required to obtain certificated copies of marriage and birth documents, even though these documents are already in the record. Elimination of this unnecessary development will help to speed up the process.

Mr. Chairman, accepting adequate medical reports of private physicians as sufficient evidence to support a claim for disability compensation under chapter 11, title 38, U.S.C., or a claim for pension under chapter 15 of such title, will lighten the workload of VA physicians, allowing them to concentrate on those necessary examinations. The provisions of this section should have a profound impact not only on the expeditious handling of new claims, but also on the growing backlog of claims.

Once again, DAV recommends that this committee act favorably on S. 1905.

S. 1906

Mr. Chairman, let me commend you and the cosponsors of this bill for your efforts on behalf of those veterans who had been exposed to ionizing radiation and who will be adversely affected by the Court of Veterans Appeals decisions in *Combee v. Principi*, 4 Vet. App. 78 (1993). This bill will correct the erroneous decision of the Court which held that a veteran cannot claim direct service connection for a disability alleged to be the result of radiation exposure during military service, unless the veteran had a disability specifically listed in 38 CFR, section 3.311b. Otherwise, and not withstanding any supporting medical/scientific documentation, the veteran would not be able to have

the claim heard on the merits of his evidence. Such a decision is an abomination of the fundamental principles underlying VA laws and regulations.

The DAV vehemently recommends the immediate and favorable action of this Committee on S. 1906.

S. 1907

Mr. Chairman, let me again commend you and your colleagues on this Committee for your efforts on behalf of those veterans injured as a result of medical malpractice on the part of the VA.

Currently, all claims relating to medical malpractice are being held in abeyance by the VA until a decision is rendered by the highest court of the nation in *Gardner v. Derwinski,* 1 Vet. App. 584 (1991), *aff'd sub nom. Gardner v. Brown,* 5 F. 3d 1456 (Fed. Cir. 1993). The VA has refused to take any action on any medical malpractice claim filed under section 1151, title 38, U.S.C., notwithstanding the fact that the claim could have been allowed under the now invalid standard of the more restrictive VA regulation.

Mr. Chairman, there is no legitimate reason why the VA should hold *all* medical malpractice claims in abeyance. Your bill adequately addresses this problem and provides the solutions. All of those veterans and claimants who would have prevailed under the VA's invalidated regulation could now receive the benefits to which they are entitled under the provisions of the legislation proposed by you.

DAV recommends the Committee's immediate and favorable action on this bill.

S. 1908

Mr. Chairman, S. 1908 was introduced in the Senate on March 8, 1994, by yourself and other members of this Committee. The bill proposes to provide for a study of the adjudication processes and procedures of the VA.

Mr. Chairman, while DAV recognizes and appreciates your concern relative to the increasing backlogs of claims at both the Veterans' Benefits Administration and the Board of Veterans' Appeals, we believe that to superimpose a review by the Administrative Conference of the United States on the current efforts of VA is unnecessary.

As you know, a recently concluded blue ribbon panel composed of Department of Veterans' Affairs and veterans' service organization employees made comprehensive proposals to the VA on ways to improve and modernize VA's claims adjudication process. In addition, a focus group consisting of veterans' service organization and Department of Veterans' Affairs personnel working in the VA appellate process, was convened in an effort to identify ways to improve the operation of BVA. Specific goals for this group are to determine:

1.) what criteria should be used to measure BVA customer satisfaction;
2.) what data already exists to evaluate BVA's performance;
3.) customer survey recipients, methods and questions;
4.) methods to provide continuous customer satisfaction in the future;
5.) what other organizations should be studied to benchmark BVA service delivery.

Mr. Chairman, in view of the above mentioned efforts, we do not support the enactment of S. 1908.

S. 677

Introduced by Senator Simon, S. 677 proposes to authorize the establishment, on the grounds of the Hines, Illinois VA Medical Center, a facility to provide temporary accommodations for family members of severely ill children being treated at the nearby Loyola University of Chicago Medical Center.

Mr. Chairman, the DAV does not oppose this measure. Clearly, such a venture illustrates a tangible example of VA's willingness to cooperate with and be a contributing member in the overall health care community.

We suggest, however, that this measure presents a timely opportunity for VA to act and position itself for the coming era of health care reform. Specifically, we suggest language be added authorizing either an expansion of the planned project to accommodate similar lodging for family members of veterans receiving treatment at the Hines facility or, at a minimum, VA sharing of space at the currently planned bed levels.

S. 789

This measure, introduced by Senator D'Amato, proposes to exempt future increases in the monthly amount paid by the State of New York to blind, disabled veterans from the determination of annual income for purposes of payment of pension by the Department of Veterans' Affairs.

Mr. Chairman, as you know, DAV focuses its legislative efforts on VA benefits and services derived as a result of a service-connected disability or death. In keeping with the long-standing policy of our organization, we take no position, either pro or con, on S. 789.

S. 792

Introduced by Senator D'Amato, this measure proposes to change the date of the beginning of the Vietnam Era for purposes of VA benefits from August 5, 1964, to December 22, 1961.

Mr. Chairman, while our national convention delegates have not taken a position on this bill, we would not oppose its enactment.

S. 1626

As we understand it, this measure, introduced by yourself Mr. Chairman, would improve VA's home loan program by restoring a veterans' entitlement in cases where the veteran has paid off the VA guaranteed loan. Additionally, this measure allows veterans to acquire energy efficiency loans while receiving interest rate reduction loans guaranteed by VA.

Mr. Chairman, clearly this measure will enhance the loan guaranty entitlements of our nation's veteran population. The DAV supports and appreciates your efforts to improve upon the VA Home Loan Guarantee Program.

This concludes our statement, Mr. Chairman. We would be happy to respond to any questions you may have.

PREPARED STATEMENT OF RUSSELL W. MANK, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. Chairman and Members of the Committee, the Paralyzed Veterans of America (PVA) appreciates this opportunity to express our views on the bills under consideration pertaining to the Department of Veterans Affairs (VA). PVA would like to briefly review each of these bills and offer our comments.

PVA is gravely troubled by S. 1904, a bill that purports to "improve the organization and procedures of the Board of Veterans' Appeals." PVA believes that this bill does precious little organizing, and no improving of the situation for the nation's veterans. S. 1904 does not take into account the needs of veterans, instead, it mandates the institutional concerns of, and the further consolidation of authority by, the Board's Chairman. PVA has spoken before and will continue to raise its voice concerning the ongoing erosion of due process rights of veterans at the hands of the Board. Only 10 percent of the Board's decisions are appealed to the Court of Veterans Appeals. For 90 percent of the veterans who are dissatisfied with the VA's initial adjudication of their benefits claim, review by the Board of Veterans' Appeals is their final appeal, and the Board the ultimate arbiter of their claim. Fundamental notions of fairness and accountability are required.

It is because of this that PVA continues its longstanding opposition to the use of single member "boards" in certain instances. We do recognize the extraordinary but, we believe, transient backlog of cases now before the Board. This temporary situation should not be taken as an excuse to provide the Board Chairman with unnecessarily increased and unreviewable authority.

There is much to find wrong with this bill and we, therefore, highlight only our highest concerns and most pressing points. PVA believes that this bill should be redrafted, and we stand ready to assist the Committee in this task.

S. 1904, as written, enables the Chairman to appoint a virtually unlimited number of temporary Board members, indiscriminately and without hindrance. There are no minimum qualifications for these members and they may be taken from anywhere within the Department. This is especially dangerous given the proposal that single Board members decide cases. This means that these temporary members, who are not required to meet any test of competency or any minimum level of qualifications, would,

alone and without consultation, be making in effect what would essentially be the final decision on a veteran's claim. If this bill becomes law we could very well have a situation where unqualified, temporary members are making unreviewable decisions. This flies in the face of fundamental principles of fairness and accountability. It is therefore essential that, at the very least, minimum qualifications for temporary members be spelled out in this legislation.

Mr. Chairman, we must bear in mind that the proposed amendment to the current section 7102 would replace all of this section. Presently, section 7102 demonstrates clear Congressional intent to provide the veteran with experienced and qualified Board members, and shows a concomitant prejudice against the use of temporary members by limiting, to one, the number that can serve on a section of the Board at any time (38 U.S.C. §7102(3)). PVA finds it difficult to believe that temporary members of unknown qualifications are now sufficiently suitable to decide, by themselves, the claims of veterans.

Frankly, we are even more troubled by the proposed changes to sections 7102 and 7103 of title 38. These proposed changes would enable the Chairman to assign a proceeding to one or more members of the Board, and would only offer reconsideration of the ensuing decision at the Chairman's discretion. The Chairman need provide no explanation for his decision. His decision is apparently unreviewable by the Court of Veterans Appeals.

As PVA has stated in the past, we support single member decisions in cases where a remand at the Regional Office, or an allowance of benefits is the outcome. It continues to be our strong belief that three-member sections should be required in all decisions denying benefits. However, if one member decisions are to be permitted, the right to reconsideration of these decisions should be better protected.

PVA recommends strongly and emphatically that veterans be granted the right to appeal single-member decisions to a three-member panel. PVA further recommends that an initial decision by a panel of three or more members be reconsidered at the Chairman's discretion, along the lines of the proposed amendment to section 7103. Furthermore, PVA believes that the denial of a claim or the denial of reconsideration be accompanied by a summary of the evidence considered and a detailed explanation of the reasons for denial.

PVA believes that these changes to S. 1904 are essential to safeguard important rights of veterans and to provide the veteran not only a system that is tailored to his or her needs, but is fair, and accountable.

In S. 1904, as written, terms such as "matter," "proceeding," and "motion" are not clearly defined. To fully effectuate the intent of Congress, we suggest that these terms, and others, be fully defined in a definitional section.

For such a radical revolution in the adjudication process, S. 1904 carries with it no guarantees that the backlog of cases at the Board will be reduced. The bill increases the unfettered power of the Chairman of the Board of Veterans' Appeals without safeguarding this increased power's proper use. These extraordinary times at the Board may well justify the need to examine the Board's procedures. Consequently, PVA further proposes, in addition to the changes noted above, that if such legislation is passed it be limited to a two year period. If at the end of two years a continuation is required, it should be justified by results. If the results do not justify its continuance then this experiment should be allowed to expire.

PVA would like to reiterate for the record our belief that claims adjudication priorities belong first and foremost at the Regional Office level, and that this area should be the subject of primary importance. Only 15 percent of all claims at the Regional Office are appealed to the Board of Veterans' Appeals. Of the number appealed to the Board, approximately 65 percent are being returned to the Regional Office because of some deficiency. Improvements at the Regional Office level will reduce the number of times a case is handled by the Board, lessening not only the backlog of cases, but the currently unconscionable time required to handle them. PVA has already expressed our commitment to Regional Office improvements in word and in deed.

S. 1905 makes a number of changes in the current VA claims procedures. Each of the changes enumerated in the bill is the product of Secretary Brown's blue ribbon panel. These changes are designed to improve service to claimants and to make record keeping requirements by beneficiaries less onerous. PVA is proud that two of its members served on this blue ribbon panel, and we are proud of their contributions to its success. The recommendations contained in the bill can also be found in the

Independent Budget, prepared by PVA along with the American Veterans of WWII, Korea and Vietnam, the Disabled American Veterans, and the Veterans of Foreign Wars. PVA supports S. 1905 wholeheartedly.

Mr. Chairman, PVA would be remiss in failing to note that S. 1905 will not alone solve the growing backlog of claims at VA Regional Offices. As pointed out in the *Independent Budget*, the percentage of claims not completed within 6 months rose from 34.1 percent in FY 1991 to 35.7 percent at the end of FY 1992. Yet, VA's proposed budget does not include adequate funding for the personnel needed to provide timely delivery of quality benefits decisions. We face the prospect of a further erosion in the currently woeful and inadequate claims services provided our nation's veterans.

S. 1906 would, in effect, overrule the Court of Veterans Appeals decision in *Combee v. Principi*, 4 Vet. App. 78 (1993). PVA supports this legislation. As Chairman Rockefeller pointed out, the bill would restore to veterans suffering from ionizing radiation related disabilities the right to establish their claims based on the theory of direct service connection, should they so desire. This is the same right which is available to other veterans seeking to establish disabilities as service-connected. We would emphasize that this is not a new right for these veterans. It is rather the restoration of a right granted by Congress many years ago and enjoyed by them until taken away by the Court of Veterans Appeals in 1993.

The Court of Veterans Appeals in 1991 (*Gardner v. Derwinski*, 1 Vet. App. 584 (1991)) invalidated VA's regulation 38 C.F.R. §3.358(c)(3), which implemented 38 U.S.C. §1151. The regulation required the showing of fault in the case of veterans seeking compensation for injury, or aggravation of injury, as the result of VA medical treatment. The Court of Veterans Appeals held that the requirement of a showing fault was beyond the scope of § 1151. Since the Court's decision in 1991, the VA until recently refused to adjudicate all claims arising under 38 U.S.C. §1151 while it pursued its losing effort in the United States Circuit Court of Appeals for the Federal Circuit. We note that VA has decided to adjudicate those claims which can be allowed under the current law. The VA is now attempting to persuade the United States Supreme Court to hear its arguments. In the meantime, the stayed cases have steadily increased. The VA's tactics of delay are causing severe hardships to many people, a problem that has not gone unnoticed by this Committee.

S. 1907 addresses this problem by requiring the VA to lift its partial stay on § 1151 claims for those claims which could be adjudicated under the pre-*Gardner* standard. While this effort is commendable, it is PVA's position that S. 1907 does not go far enough. Rather than limiting the cases to be adjudicated to the pre-*Gardner* cases, VA should be directed to adjudicate all § 1151 cases. Both the Court of Veterans Appeals and the Federal Circuit have found the VA's regulation invalid. The VA should be made to comply with those Court decisions, notwithstanding 38 U.S.C. §7291(a). As in the case of S. 1906, veterans' claims should not be held hostage by the litigation strategy of the VA.

If S. 1907 is limited to the pre-*Gardner* claims, PVA suggests the following changes or additions:

1. that the words "claims relating to medical malpractice" be changed to "pre-*Gardner* type claims";

2. that it be made clear that the legislation is an emergency measure only;

3. that the language stating that the legislation is not to be construed as an expression of Congressional intent to limit the types of claims which fall within the scope of § 1151 be made more pronounced;

4. that claims adjudicated under this legislation not be made subject to the requirement to submit new and material evidence in order to reopen the claim under *Gardner* if denied; and

5. that, consistent with the pre-*Gardner* standard, compensation should be made payable for an "accident."

S. 1908 would provide for a study of VA undertaken by the Administrative Conference of the United States. PVA is well aware of the reputation of the Administrative Conference of the United States and the fine work it accomplishes. This legislation to sponsor a study under the auspices of the Administrative Conference is welcome if it is truly aimed at improving the claims processing system and is not solely for the purpose of validating old ideas.

PVA is concerned that S. 1908 limits the potential scope and contents of the proposed study. It appears that the study directs that only certain areas of the

adjudication process are to be examined. In fact, the whole adjudication process is in need of study.

PVA would also point out that some areas of the scope and content of the proposed study are unclear. For example, there is no definition of the word "claim." The VA uses a number of different meanings for the word "claim" within the adjudication process, as well as for statistical measurements. *Failure to define this and other key phrases in the legislation may result in a skewed statistical base upon which judgments will be premised.*

PVA further recommends that there be a required opportunity for adequate review and comment of the draft study, of not less than sixty (60) days, at the end of one year. The one year review is contained in section 1(f)(1) of the bill. We feel that this is necessary to assure that the study is proceeding along appropriate lines.

S. 667 would permit the construction of a "Ronald McDonald House" on the grounds of the Hines VA Medical Center. PVA is advised that the land granted for this purpose is of no use to VA now, nor will it be in the future. The contemplated building would not interfere with the work or function of the VA Medical Center. Generally, PVA would prefer that any grants of land be devoted to purposes that would benefit veterans, and further their health care. In this instance, the "Ronald McDonald House" program is well known for its work on behalf of severely ill children, and in consideration of the unique and special factors making this property the best suited for this charitable enterprise, PVA supports S. 667.

S. 789 would exclude payments from New York State to blind, disabled veterans in determining entitlement to VA nonservice-connected pensions. PVA notes that Supplemental Security income, as well as certain State and County assistance to veterans, is excluded from income in determining entitlement to VA pension. PVA believes that other State payments to catastrophically disabled veterans should be treated in the same manner as blind, disabled veterans. We, therefore, support the concept embodied in the legislation.

S. 792 would change the statutory date for the beginning of the Vietnam Era from August 5, 1964, to December 22, 1961. Mr. Chairman, the present statutory date for the beginning of the Vietnam Era is premised on the passage of the "Gulf of Tonkin Resolution" by Congress (P.L. 88-408). This is truly a watershed date in the Vietnam Conflict. By contrast, we are unable to determine the importance or significance of the December 22, 1961, date proposed in this legislation. PVA suggests that the date change encompass all American activity in Southeast Asia. The sacrifices of all our military forces in Vietnam were no less in the early years of our involvement than for those who followed them and are now recognized by law as Vietnam era veterans. They were knowingly sent in harm's way, and faced the same hazards of combat as their later comrades.

PVA would note briefly that American military involvement in Vietnam dates back to the Eisenhower Administration. In 1955 America took over from the departing French the actual training of the military forces for the Republic of South Vietnam and the designation of our military forces and efforts in Southeast Asia became "MAAG Vietnam" (Military Assistance Advisory Group) from "MAAG Indochina." In October 1957 the first American casualty was incurred, and in July 1959, the first Americans were killed due to hostile action. The Republic of South Vietnam declared a state of emergency in October 1961 and in December 1961 the first complete combat units (unarmed helicopter support troops) of American forces arrived in Vietnam. Troop strength by December 1961 was 3,200 compared to 17,000 in August 1964 and 60,000 by August 1965. The first official Army Campaign Designation in Vietnam ("Advisory") was from March 1962 to March 1965.

This brief historical review indicates a host of potentially significant dates. Although PVA supports S. 792, we suggest that the beginning of the Vietnam era statutorily coincide with some date in the Eisenhower Administration.

S. 1626, relating to VA's Home Loan Guaranty Program, removes the reference to the veteran's disposal of property by sale or through loss by fire or other natural hazard. The proposed amendment reinforces the existing requirement that a loan be repaid and the Secretary's liability be waived to permit the discretionary exclusion of previous loan guaranty amounts. Section 3 of the bill adds a new paragraph to the statute allowing an automatic guaranty for refinancing for specified energy efficiency improvements. While PVA agrees with the concepts contained in this legislation, we question the adequacy of the amounts provided for the energy efficiency improvements.

H.R. 949 concerns the Veterans' Home Loan Guaranty Program, the State Cemetery Grants Programs, and financing discount points. PVA concurs with the needed increase in the maximum amount of guaranty entitlement which will assist in keeping up with inflation.

We support the concept of the mortgage payment assistance to avoid foreclosure of home loans. We estimate that a relatively small portion of the veteran population would qualify for this benefit. We are also concerned that this benefit is completely discretionary on the part of the Secretary. No mechanism exists for an outside review of the power exercised by the Secretary in this area. We believe that this is contrary to the prevailing idea of accountability in the exercise of benefit determinations.

PVA has no objection to a plot allowance for veterans buried in a State Cemeteries or for the increase in Federal aid to State cemeteries. PVA has no objection to section 8 of the bill concerning the Homeless Veterans Comprehensive Service Programs Act of 1992. PVA also has no objection to the final provision of the bill concerning financing discount points and rate adjustments for adjustable rate mortgages.

Thank you, Mr. Chairman. That concludes my testimony today. I will be happy to answer any questions that you, or this Committee, might have.

PREPARED STATEMENT OF BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and Members of the Committee:

Thank you for inviting the Veterans of Foreign Wars of the United States (VFW) to participate in this legislative hearing. Our 2.2 million members and their dependents, some of whom are surviving widows, have a vested interest in most, if not all, bills under discussion today. Our presentation addresses each bill in numerical order.

S. 677

This bill would allow a Ronald McDonald House to be established on the grounds of the Department of Veterans Affairs Hospital in Hines, Illinois, a suburb of Chicago. It is further identified as being adjacent to Loyola University Medical Center. Senator Paul Simon (D-IL) introduced this bill almost a year ago on March 30, 1993. The intent is to provide temporary accommodations for family members of severely ill children being treated at the Loyola medical center. The facility would be officially called The Caring Place at Loyola, Inc. It would be built and operated at no cost to the federal government and would be a not-for-profit facility operated as a service to the public. While this is not a parochial veteran issue, the VFW has no objection to this joint venture of public, private, and the not-for-profit entities entering into a long term agreement to use some of the Hines hospital property for this humane purpose.

S. 789

This bill, if enacted into law, would prevent VA from reducing from federal pensions any dollar for dollar *increases* in New York state paid monthly annuities to the approximately two thousand blinded veterans living in that state. Senator Alfonse D'Amato (R-NY) introduced this bill eleven months ago in April 1993. It is a fact that the Internal Revenue Services (IRS) treats the current New York blinded veterans' monthly payment of $41.66 as a gift rather than income. Hence, because this bill only exempts increases, it is budget neutral while at the same time improving the overall quality of life for blind veterans. The VFW certainly supports this wise and compassionate legislative proposal.

Furthermore, the VFW recommends using the philosophy of this bill to assist more veterans by amending that portion of the text that states " * * * blind *and* totally disabled veterans," to read " * * * blind *or* totally disabled veterans." This action would then include those totally disabled but not necessarily blind veterans who receive special consideration. For example, the state of Maryland waives the payment of real estate tax for totally disabled veterans. The IRS is now considering action to include this non-cash benefit as part of the totally disabled veteran's taxable federal income.

If this change were acceptable we realize any reference to the state of New York must be deleted.

S. 792

This bill proposes to change the beginning date of the Vietnam Era for purposes of veterans benefits from the present date of August 5, 1964, to December 22, 1961. Again Senator D'Amato took the initiative in April 1993 to introduce this companion bill to Congressman Gerald Solomon's (R-NY) bill H.R. 394. The VFW certainly supports the expanded 32 months of service this bill recommends because it more accurately reflects the true period of possible service in the Vietnam theater of operations for many veterans. However, it is a well known fact that an additional smaller number of U.S. servicemen were involved in both covert operations and overt training missions in Vietnam as early as July 1958. Therefore, the VFW asks this committee to consider the date of July 1, 1958, as the beginning date of the Vietnam Era as the more accurate date from which to calculate veterans benefits associated with service in Vietnam. In fact, this date is identical to the date Department of Defense (DOD) uses to award the Armed Forces Expeditionary Medal to service-members assigned to Vietnam before the period of 3 July 1965 when the Vietnam Service Medal was first awarded. We believe bringing the DOD award date criteria cited in title 10, United States Code (U.S.C.), and Vietnam Era benefits to be allowed by title 38, U.S.C., should be identical. In fact, this would be a most proper and equitable thing to do now, almost two decades after the end of hostilities in Vietnam and the beginning of political, economic, and cultural exchanges with that former enemy. Certainly Congress would not purposely treat American servicemembers less magnanimously than we now treat a former foe. Attached to this statement is a copy of VFW Resolution No. 664 entitled, "Expand Vietnam Era". It contains all the necessary rationale for this 103rd Congress to establish the definitive beginning date as July 1, 1958.

S. 1626

Senator Rockefeller (D-WV) , this committee's chairman, titled his bill the "Veterans' Home Loan Improvement Act of 1993". It has two suggested improvements that make good business sense for both the veteran and the government. The VFW supports both the concept to allow a veteran who has paid off a VA guaranteed home loan, but has not sold the home, to be eligible for a second VA guaranteed residential loan. This change recognizes the fact that divorced spouses and children may still reside in the originally purchased home or the veteran may have simply outgrown the house and allowed extended family members to live there while he seeks another home more in keeping with the life style and income of a middle aged person. The second improvement will allow veterans who refinance their home loan to apply the money they save on the monthly interest to be applied to all kinds of energy efficient home improvements. This proposal enhances the value of the veteran's home while he occupies it and in small ways helps to conserve consumption of a source of energy which is a national, economic, and environmental goal.

S. 1904

This bill, introduced by Senator Rockefeller on March 8, 1994, is designed to improve the organization and procedures of the Board of Veterans' Appeals (BVA). At the end of fiscal year 1993 BVA had a backlog of 40,000 cases It took BVA an average of 16 months to decide a case and this timeliness will probably deteriorate to a period of 5 years by the end of fiscal year 1994 which is September 1995. The VFW approves of each of the bill's recommendations. They are: first, remove the 65-member limitation on the number of members that may be appointed to the board while at the same time precluding the Chairman of BVA the authority to appoint *temporary* Board members; second, the flexibility of allowing the Chairman of BVA to assign an appeal to a *single* member or to a panel of members consisting of at least three. Attached to this statement is a copy of VFW Resolution No. 602 entitled, "Approve One-Member Decisions At The Board of Veterans' Appeals"; and last, the proviso to allow BVA to conduct personal hearings through the use of electronic media as the private sector has been doing for the past 20 or more years. The popular term is "teleconferencing".

S. 1905

Senator Rockefeller introduced this bill to improve the claim process at the VA's regional office level. The VFW supports each and every one of the four recommendations because they should reduce the time to initiate and/or renew certain basic claims. First, there is the action to eliminate the mandatory requirement to file an annual

eligibility report for pension recipients; second is to accept written or photocopies of documentation as proof of marriage(s) and dependents; third is to now accept private physician's medical examinations to support a compensation or pension claim; and last is to require all branches of the armed forces to transfer within a reasonable time of discharge or separation the servicemember's medical records to VA.

S. 1906

This bill, introduced also in March by Senator Rockefeller, reinforces the intent of Congress to allow veterans to establish a direct service-connected disability simply by providing sufficient supporting evidence as allowed in sections 1110 and 1131 of title 38, U.S.C. Bill S. 1906 reinforces this broad philosophy and at the same time specifically states, "that service connection for disabilities arising from exposure to ionizing radiation or dioxin [Agent Orange] may be established by direct evidence". The VFW certainly supports this action.

S. 1907

Senator Rockefeller also introduced this bill on March 8, 1994, simply to require VA to continue to process claims relating to medical malpractice in the VA health care system as allowed in section 1151, title 38, U.S.C., *provided* such claim had not been previously denied by the VA. This bill, which the VFW does support, is necessary today because VA itself has suspended all actions on all section 1151 claims whether previously denied or original/new claims. The VA is appealing to the Supreme Court of the United States, a Court of Veterans Appeals' (CVA) decision in the case of *Gardner v. Derwinski* which determined that VA's *regulations* (which are written by VA lawyers) interpreting section 1151 of title 38, U.S.C., were too restrictive and, thereby, invalidated section 1151. Because no date has yet been given by the Supreme Court to hear the case, bill S. 1907 is an effort to have VA at least rule on new section 1151 claims and hopefully provide some relief to veterans or surviving spouses.

To be of assistance to more veterans the VFW recommends broadening the meaning of medical malpractice to include the phrase " * * * nosocomial disease or infection." This change would then include all the contagious diseases and infections found in a hospital that a veteran could succumb to while being treated for some other entirely unrelated medical problem.

S. 1908

This is the fifth and last bill introduced by Senator Rockefeller regarding the adjudication system. The VFW does agree with the premise that the current VA adjudication system is completely broken. It took a long time to reach this state and there is enough fault to go around. The issue now is to try to get this slice of the VA up and running well in a reasonably short period of time. Bill S. 1908 recommends the VA pay $150,000 to the Administrative Conference of the United States (ACUS) which is staffed primarily by attorneys to study, evaluate, and recommend improvements to VA and the respective congressional veterans affairs committees within 18 months of the day this bill would become law. The evaluation is to touch on all aspects of the claims procedure from the regional office through to BVA final decisions. At first glance this appears to be a good idea. However, the VFW has some serious misgivings about this bill. We unfortunately remember the May 1992 ACUS draft study they submitted to the Office of Personnel Management (OPM) wherein ACUS went beyond the scope of their interagency agreement and submitted an unrequested and badly flawed report regarding veterans' preference in the appointment of Administrative Law Judges (ALJ's). To add insult to injury, even after the veteran service organizations informed ACUS of their faulty work that agency proceeded to release their flawed study and recommendations. So much for the manner in which ACUS consulted with appropriate representatives of veterans service organizations and/or other entities that represented veterans. Aside from this historical ACUS experience, the VFW is concerned that Congress may not want to authorize additional money to hire much needed VBA staffers over the two year period of time ACUS will have to study the claims problem. Furthermore, BVA is about to undergo a review of their procedures by an outside panel called the Focus Group. In sum, the VFW believes this topic is being adequately covered and we see no advantage to empowering another study of the same material for a period of two more years.

S. 1927

This bill's short title is the "Veterans Compensation Cost-of-Living Adjustment Act of 1994". It was introduced on March 11, 1994, and has the bipartisan support of every member of this committee. The VFW certainly supports your efforts to increase, effective December 1, 1994, the rates of compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity (DIC) paid to the survivors of certain service-disabled veterans. The cost-of-living adjustment (COLA) would increase by the same percentage as the increase in Social Security and VA pension entitlements. We are pleased to note the COLA increase is at least equal to that provided for title II of the Social Security Act, which in turn is equal to the consumer price index (CPI). Because only 2.2 million service-disabled veterans and about 300,000 survivors are affected, the VFW asks this committee to consider increasing the COLA rates above the determined CPI figure, estimated to be 3 percent at this time, because these two categories of citizens derive the majority of their income from VA compensation. A source of the increased money could come from the peace dividend as outlined in VFW Resolution No. 613. A copy is attached to this statement for your consideration.

This concludes the formal VFW written statement. It will be my pleasure to either respond directly to any questions the committee members have or, if necessary, to research the VFW position and provide a follow-up written response. Thank you, Mr. Chairman.

PREPARED STATEMENT OF RICHARD B. FRANK, PRESIDENT, BOARD OF VETERANS' APPEALS PROFESSIONAL ASSOCIATION, INC.

Mr. Chairman and members of the Committee, on behalf of the Board of Veterans' Appeals Professional Association, I wish to thank the Committee for this opportunity to appear. Prior to addressing the topics before us today, I would like to express our appreciation for the thoughtful attention the Committee has extended over the years to the Board and its operations.

Mr. Chairman and members of the committee, in the past, the Board maintained the goal of entering a decision within 150 days of the date on which a case was received at the Board. We call the measure of this interval timeliness. We ended Fiscal Year 1993 at a figure of 466 days; at our current rate, we will be at about five years at the end of this Fiscal Year and at six and one half years at the end of Fiscal Year 1995. Mr. Chairman, we believe that tremendous credit is due to you for recognizing that we are now in desperate need of immediate action to begin to address what can fairly be called a timeliness crisis in the appellate process. At the same time, we must emphasize that as Administrative Judges, Board Members are obligated to impartially apply the law to the facts as we find them. We believe that our role as judges makes it improper for us to draft or comment on legislation that goes to the substantive rights of veterans. We are confident that the National Service Organizations can act as spokesmen for veterans on such proposals. Therefore, we will not be addressing the provisions of S. 1905, S. 1906 and S. 1907.

We do believe we may properly comment on legislation that goes directly to the duties and responsibilities of Board Members. In this context, S. 1904 contains provisions that will have a profound impact on our duties and responsibilities and the timeliness of decisions at the Board. The proposal to empower individual Board Members to enter final decisions is a radical change from the panel decision format in which the Board has acted since its inception over sixty years ago. Given the timeliness crisis, however, and the fact that we now have the United States Court of Veterans Appeals, we fully support the shift to single member decisionmaking. At the same time, we caution that this measure alone will not cure the timeliness crisis. The panel format permits certain divisions of labor that will be lost in the single member environment, such that realistically our gains in productivity will be measured in tens, not hundreds, of percentage points.

There is a technical provision in the S. 1904 that we would urge the Committee to revise on grounds of both principle and practicality. Proposed section 7103 (c) (2) directs that the member or members of an original panel may not participate on an enlarged reconsideration panel. This is contrary to judicial practice in other arenas, including the United States Court of Veterans Appeals. To the extent that the philosophical underpinning of judicial review is to accord veterans the same rights as

other citizens, this provision would insert an unwarranted anomaly. Further, at a juncture when we are recognizing that timeliness is absolutely critical, this procedure would add further delay to the process by excluding the member or members already familiar with the record from the reconsideration panel. Finally, the very problematic application of this concept is illustrated by its head-on collision with another critical component of the same legislation. Proposed section 7107(c) contains peremptory language that a member or members of the Board who conduct a hearing shall participate in the final decision of the Board. We believe the common sense of this provision is obvious, and that "shall" will probably trump "may not" in statutory interpretation so that we would end up with an anomalous situation where some reconsideration panels would contain the original member or members and some would not, depending upon whether there was a hearing in the case.

Proposed section 7107 also contains other language that will create far more problems than it will resolve. Currently, the Board maintains a hearing docket for cases in Washington and each regional office maintains a separate docket for travel hearings conducted at that facility. These dockets are on a first come, first served basis, and travel hearings are conducted regularly as soon as the docket warrants. This system has been functioning quite well. The literal language of proposed section 7107(c) and (d) (2) (A), would permit only one centralized hearing docket and mandate that all hearings would be scheduled in the order they are docketed. Under this procedure, if requests for hearings are received in order from three veterans located in Washington, Fargo and San Diego, then by law the Board would be obligated to schedule hearings for these veterans sequentially in Washington, Fargo and San Diego. Obviously, this is impractical and self defeating. Therefore, we respectfully submit that these provisions be redrafted to permit the continuation of a system that is not only not broken, but actually working quite well.

With respect to S. 1908, we would offer two comments. First, we certainly welcome any impartial review of the claims adjudication system with a view towards improving its quality and timeliness. As we understand the procedures of the Administrative Conference of the United States (ACUS), however, ACUS will simply contract with outside parties, normally law professors, to actually conduct the study. Therefore, we are not at all certain that such authority to contract for an independent study could not as easily be given the Secretary as ACUS. Second, while this is a very large task, there is need for dispatch. Accordingly, we would respectfully suggest that consideration be accorded to shortening the timeframe for the preliminary report to no more than nine months and for the final report to one year.

On behalf of the Board of Veterans' Appeals Professional Association, I again thank the committee for this opportunity to appear. I would be glad to answer any questions you may have.

WRITTEN QUESTIONS FROM CHAIRMAN ROCKEFELLER TO THE DEPARTMENT OF VETERANS AFFAIRS AND THE RESPONSES

Question 1. At the hearing, you testified that if the 622 full-time equivalents (FTE) cut from the 1995 Veterans Benefits Administration (VBA) budget were restored, VBA would be able to reduce the average time for processing a claim to 100 days in the next year. Please explain why, if this is true, VA's budget request to OMB did not include a request for the same number of FTE for FY 1995 as the FY 1994 level, with an eye to simply shifting those FTE from OBRA workload to other claims processing tasks.

Answer. The Veterans Benefits Administration (VBA) does not attribute the 622 reduction to OBRA. This number reflects VBA's entire reduction. Only 464 FTE are attributed to a decrease in OBRA workload, of which 349 FTE are in the Compensation and Pension Service. The reduction reflects our successes from our matches conducted to date. Future matches will generate fewer names resulting in reduced workload and fewer FTE required to support OBRA.

We not do believe that unlimited FTE is the answer to our timeliness problem. We are beginning to implement the blue ribbon panel initiatives, which the panel determined would improve claims processing timeliness. Besides the extensive blue ribbon panel initiatives, there are other efforts being undertaken to alleviate the backlog. They include formal training by the Compensation and Pension Service presented at the VBA Academy in Baltimore and at the regional offices. Over the past year, the Compensation and Pension Service presented special training on the

decisions of the Court and special rating issues directly to rating board members at some 50 stations. A number of our regional offices are involved in reengineering initiatives to streamline the processing of claims. New York, Portland, Muskogee, Oakland and Jackson have taken the lead in the endeavor which is in concert with the goals of the National Performance Review.

Current regulations require a VA medical examination for many disability claims but allow VA to accept a private physician's statement as the VA examination in certain situations. We published a proposed regulatory amendment in the Federal Register on February 1, 1994, which will increase the number of situations in which a private physician's statement may be accepted as a VA examination.

Current regulations provide that in order to establish his or her dependents, a claimant must submit a copy of the public record of marriage, birth, death or relationship certified over the signature and official seal of the person having custody of the record. We have drafted regulations which will allow acceptance of photocopies as proof of relationship in most cases.

On the legislative side, VA is developing a proposal that would eliminate the current mandatory requirement that all recipients of pensions or parents' death and indemnity compensation, annually submit an eligibility verification report (ERV). If given this authority, VA would develop criteria for exemptions through the notice-and-comment rulemaking process. Once this process is complete, we anticipate the number of persons annually submitting EVR's to decrease.

Question 2. Currently, VA may assist veterans who are delinquent on their loans by seeking forbearance from the primary lender or by refunding the loan under section 3732 of title 38. Do you anticipate that loans proposed under section 2 of H.R. 949 would substitute for refunding and intervention in many cases, or would VA extend loans under this new program in cases where intervention or refunding would not be appropriate?

Answer. We anticipate that Mortgage Payment Assistance under section 2 of H.R. 949 would be granted to veterans who should be able to meet their obligations without refunding assistance but need short-term assistance in order to do so. This may occur in cases in which we intervened on the veteran's behalf but, for reasons outside the veteran's control, the intervention was not successful. We expect few cases would qualify for Mortgage Payment Assistance which currently do not merit either refunding or intervention.

Question 3. Under both the current refunding program and the proposed new section 3715, VA is required to determine whether the veteran has reasonable prospects for resuming payments on his or her loan.

Question 3a. What criteria are currently used in making this determination?

Answer. VA refunding guidelines do not specifically define what constitutes evidence that a veteran has the ability to resume mortgage payments or what constitutes a "reasonable period" of time to be allowed before a veteran is expected to do so. Each veteran's situation is unique and each case is reviewed on an individual basis. In this review, judgments as to what constitutes acceptable evidence of the ability to resume payments, what constitutes a "reasonable period" and how much weight should be given these items in the decision to refund, are made by Loan Service Representatives based on their experience.

Question 3b. Would standards for making this determination under proposed section 3715 differ from those used in the current refunding program?

Answer. They would differ in one way. Under current refunding guidelines the ability to resume mortgage payments does not necessarily mean the ability to resume payments at the current rate. When a loan is refunded, VA may modify the terms of the loan (e.g., reduce the interest rate or reamortize the loan). The modification depends on the veteran's ability to pay. To qualify for Mortgage Payment Assistance under H.R. 949, the veteran must have a reasonable prospect of being able to resume payments at their current level. Thus, it may be more difficult for VA to determine that a veteran has reasonable prospects for resuming payments with the mortgage assistance provision than under current refunding authority.

Question 4. How many home loans were refunded in each of the last three years?

Answer. In FY 1993, VA refunded 1,087 loans; in FY 1992, 920 loans; and, in FY 1991, 783 loans.

Question 5. What percentage of defaulted loans were refunded in each of the last three years?

Answer. In FY 1993, the ratio of refunded loans to defaulted loans was 3.77 percent; in FY 1992, it was 2.8 percent; and, in FY 1991, it was 2.2 percent.

Question 6. How many veterans sought refunding but were denied in each of the last three years?

Answer. We do not maintain this information.

Question 7. What review process is available for a veteran whose request for refunding is denied?

Answer. Refunding is discretionary on the part of VA and there is no formal review process available to veterans whose refunding requests are not approved. However, we would be receptive to any new information provided by a veteran, who was previously denied refunding, that gives a basis for reconsideration of a refunding denial.

Question 8. What percentage of terminated loans are sampled under VA's home loan program quality control procedures, and what percentage of those sampled cases have been challenged by the reviewer in each of the last three years?

Answer. The percentage of terminated loans sampled under quality control procedures depends on each individual station's workload. At the beginning of each fiscal year, stations are required to base sample sizes on estimated or projected monthly volume. For example, the maximum percentage of cases subject to quality review at a station with an average monthly volume of 20 termination cases is 15 percent, while it is 8 percent at a larger station with an average volume of 50 cases. If the fiscal plan is revised due to significant changes in workload, the sample size will then change based on the average volume expected for the remainder of the year.

We do not have data available on the percentage of sample cases challenged by the reviewers. However, we do examine field station quality control procedures as part of our survey process.

Question 9. Proposed new section 3715 would require that a veteran be six months behind on payments before the loan could be extended.

Question 9a. Under normal circumstances, will some delinquent loans have gone into foreclosure before six months have elapsed?

Answer. Yes.

Question 9b. If yes, is the six month waiting period advisable?

Answer. Yes. H.R. 949 does not require that VA wait until a veteran is six payments behind before assistance is extended, only that there be a reasonable prospect that a veteran who receives assistance can resume payments on his or her primary loan within six months after assistance has been granted. However, loans which have gone into foreclosure before being six months delinquent have generally been recognized as insoluble defaults early in their delinquency and would not qualify for Mortgage Payment Assistance.

Question 10. Please comment on the operational/logistical issues that would be involved in securing a loan under proposed section 3715. Please include in our comments, answers to the following:

Question 10a. Would the veteran be required to execute a second mortgage?

Answer. Section 3715 requires that a Mortgage Payment Assistance loan be secured by a lien on the property securing the primary loan. A second mortgage is the most common means of doing so, and we anticipate VA would require it. Liens on other security owned by the veteran are permitted. We anticipate such liens would rarely be taken because, if the veteran owns other valuable assets which could be liened, we would usually expect the veteran to liquidate these assets to reinstate his or her loan before being granted Mortgage Payment Assistance by the Government.

Question 10b. Who would prepare and record related documents?

Answer. We expect VA would prepare and record these documents. Within VA, the Office of the District Counsel and staff of the Loan Service and Claims section would be involved.

Question 10c. What would be the effect on staff workloads?

Answer. Where the Office of the District Counsel can provide a standard form for a second mortgage and note, which can be completed by entering the names of the parties, the amount of the lien, repayment terms and a legal description of the security, the additional work would probably amount to about 3 hours per case.

Question 11. At least two of the veterans organizations that testified at the Committee's hearing suggested that the bill be amended to allow families of seriously ill veterans to stay at the facility while their family members are receiving care at the Hines VA Medical Center. Would you provide VA's views on this suggestion?

Answer. If a veteran has a seriously ill child at Loyola University Medical Center, he/she would be eligible to stay at The Caring Place. The license provides for at least one room to be available at no charge to a VA User. This is consistent with the mission and bylaws for Ronald McDonald Houses. These Houses were first established in 1974 under the not-for-profit corporation, Ronald McDonald Children's charities (RMCC), which also awards grants to organizations that benefit children in the areas of health care and medical research, education, and civic and social service. The corporate bylaws for RMCC specifically allow only seriously ill children and families of seriously ill children to stay at a Ronald McDonald House. Family members of adult patients are not included under the Ronald McDonald bylaws.

Question 12. In prior years, this Committee has considered several different dates to which to extend the definition of the Vietnam era for those who served in the Vietnam theater—such as the date of the first casualty, the first awarding of a Vietnam service medal, or the first combat mission. Would you give us your view as to which date—and the costs associated with that date—would be most appropriate to mark the beginning of the Vietnam era?

Answer. Apparently, December 22, 1961, the date provided in S. 792, is the date from which official casualty statistics for the Vietnam conflict began to accrue. Although this date does have some significance, United States troop involvement in the Republic of Vietnam began much earlier, and an astute historian could name one of several alternative beginning dates with equal justification.

Intensive U.S. military involvement began following the Gulf of Tonkin Resolution, and for that reason we prefer to maintain the current beginning date. Subsequent to August 5, 1964, the possibility that a service member would serve in Vietnam and incur the risks of combat was substantially increased.

Furthermore, the Gulf of Tonkin Resolution may be viewed as Congressional authorization for U.S. combat involvement. Moreover, before a change to the beginning date of the Vietnam era is made, the comments and recommendations of the Department of Defense should be requested.

We prefer to maintain the current beginning date. If an earlier beginning date is legislated, we recommend that it cover only those individuals who served in the Republic of Vietnam, including service in the waters offshore and service in other locations provided that the conditions of service involved duty or visitation in the Republic of Vietnam.

This restriction would prevent confusion and is not without precedent. Section 9 of Public Law 91-588 added the Mexican border period as a period of war, restricting entitlement to veterans who served 90 days or more in Mexico or on the adjacent borders and waters. The law also restricts Spanish-American War service, and the ending date for World War I may be extended to April 1, 1920, only for veterans who served with the U.S. military forces in Russia (38 U.S.C. 101(6) & (7)).

WRITTEN QUESTIONS FROM SENATOR MURKOWSKI TO THE DEPARTMENT OF VETERANS AFFAIRS AND THE RESPONSES

Question 1. One of the Committee's bills (S. 1905) would allow VA's regional offices to adjudicate claims more efficiently by eliminating a requirement that has diverted staff away from the adjudication function—the requirement that staff review veterans' annual income verification filings. If this requirement is eliminated, will VA have at its disposal sufficient alternative means to verify income and protect against potential fraud? Please outline VA plans for detecting pension program fraud in the absence of annual income verification filings.

Answer. If this provision of S. 1905 is enacted, it is our intention to cease sending annual income reports only to pension recipients who have either no other income or have income only from Social Security. We can adequately monitor these individuals through our existing computer matches with the Social Security Administration and the Internal Revenue Service under the authority of 38 U.S.C. § 5317. Additionally, each year we shall send to these beneficiaries a letter notifying them that they must report to VA any changes in income, net worth, or dependency. We believe these measure will provide sufficient safeguards for maintaining program integrity.

Question 2. Regarding Senator Simon's Bill (S. 677) to authorize the construction of a Ronald McDonald House on VA property to house parents of child patients at the affiliated non-VA hospital next door:

Question 2a. What is the value of the VA property on which the House would be built?

Answer. It is proposed that The Caring Place at Loyola, a Ronald McDonald House, be built on approximately two acres of land located at the southernmost end of the Edward Hines, Jr. VA Medical Center (Attachment A). Although there are no immediate plans to utilize this parcel of land, the area which surrounds it is an integral part of the reservation with potential for future VA development. Any new construction of Hines will most likely occur close to the main hospital at the north end of the campus, or, with health care reform in mind, within the surrounding community. Thus, the parcel has little market value, although we do not have an actual appraisal. The proposed project will allow VA to retain ownership of the property to reap other benefits. (See Attachment B.)

Question 2b. How would a lease to the property be structured?

Answer. Final revisions are being made to the "revocable license for non-federal use of real property" for a period of fifty (50) years; the license is subject to termination by either party with advance notice in writing of 360 days. Passage of S. 677 would allow the VA to convert the revocable license to a long-term lease; both agreements would be at no cost to the VA for use of the property.

Question 3a. Would the families of VA patients be allowed to use the facility?

Answer. If a veteran has a seriously ill child at Loyola University Medical Center, he/she would be eligible to stay at The Caring Place. The license provides for at least one room to be available at no charge to a VA User. This is consistent with the mission and bylaws for Ronald McDonald Houses. These Houses were first established in 1974 under the not-for-profit corporation, Ronald McDonald Children's charities (RMCC), which also awards grants to organizations that benefit children in the areas of health care and medical research, education, and civic and social service. The corporate bylaws for RMCC specifically allow only seriously ill children and families of seriously ill children to stay at a Ronald McDonald House. Family members of adult patients are not included under the Ronald McDonald bylaws.

Question 3b. Would VA support or oppose an amendment to S.677 which would require that The Caring Place at Loyola, Inc. make lease payments to VA for the use of VA land?

Answer. The Department has not yet developed a position on such an amendment.

Question 3c. If VA would not support such an amendment, would VA support legislation to make other property available to other not-for-profit organizations at no charge? If VA supports "free access" to its land in this case, how would it distinguish between not-for-profit organizations which would be afforded similar "free access" in other cases at other sites and those which would not?

Answer. VA will carefully review any future proposals from not-for-profit organizations asking to utilize VA land. It is difficult to predict whether the benefits The Caring Place at Loyola will bring to Hines Hospital and the VA can be duplicated by any other not-for-profit institution, but should similar conditions exist elsewhere, the VA will certainly look into the possibility of a licensing agreement with the requesting organization, particularly one with a long-standing positive image such as the Ronald McDonald House.

Question 4a. It is my understanding that VA's agreement with The Caring Place at Loyola, Inc. would set aside one room (at no charge) for a "VA User." What is VA's understanding of the term "VA User?"

Answer. As indicated in the licensing agreement, the term "VA User" is defined by the VA Hines Hospital Director. Such language will allow the VA the flexibility to make necessary changes to "VA User" as the needs change. Should the House be operating today, the definition of "VA User" would most likely include any VA employee or VA patient with a seriously ill child at Loyola University Medical Center. However, when the House actually opens two years from now, the definition could be modified in keeping with health care reform, and include family members of VA children patients being treated at Loyola under a VA sharing agreement.

Question 4b. What is the projected need of "VA Users" for use of such "set aside" space?

Answer. The actual need of the "VA Users" cannot be accurately projected at this time, which underscores the importance of the discretion afforded to VA under the proposed license to change the definition of "VA User" as necessary. However it is defined, the VA envisions utilizing the designated room continuously.

Question 4c. What will non-VA users be charged for use of the facility?

Answer. Actual charges for use of the House have not been established at this time. When construction of the House nears completion, decision about the day to day operations of the House will be made. In general, it is believed that a nominal daily rental rate will apply to cover expenses, and that there will be reduced rates for those who cannot afford the rent.

Question 5. What role (if any) would VA assume in the management of the proposed Ronald McDonald House? Would VA representatives sit on the House's governing board?

Answer. VA would not be directly involved in the management of the Ronald McDonald House. Subject to a determination that there is no conflict of interest, VA personnel will participate on the Board of Directors of the Caring Place.

Question 6. Has VA suggested to the Ronald McDonald organization that it would be interested in the construction of a facility at Hines (or elsewhere) for the use of persons visiting veteran patients? What was the organization's response?

Answer. Early on in the planning stages, discussions began regarding the possibility of building a second facility which would house family members of adult patients, and The Caring Place at Loyola pledged their commitment to such an undertaking after completion of the first House. Also, last December, Hines Hospital submitted a proposal to convert one of its existing duplexes into a "Fisher House", although word of funding has not been received at this time. (Fisher Houses were originally built for family members of service personnel undergoing treatment at active duty military facilities and now are being expanded for VA hospitals). This proposal is currently under review by the Zachary and Elizabeth M. Fisher Armed Services Foundation.

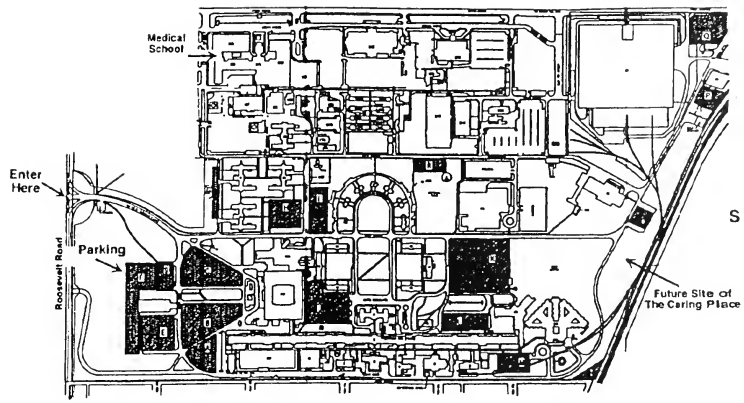
Question 7 (S. 1626). How many energy efficiency loans has VA guaranteed under existing statutory authority? How many of these properties have gone into default? Has VA been able to recover the loan amount (as increased to reflect energy efficiency improvements) in resales of such properties? Have lenders?

Answer. From October 1992 through February 1994, VA has guaranteed 676 energy improvement loans. A total of eight of these loans has been reported by lenders to be in default. Seven of these defaults are still active, while one has been cured. There have been no foreclosures or property acquisitions in connection with the energy improvement provision.

Question 8 (S. 1626). What data does VA have to support (or refute) the hypothesis that the costs of energy efficient improvements are reflected in the value of a home? Would such costs be recoverable in the event of default?

Answer. We have no reliable data which support, or refute, the hypothesis that energy efficiency improvements are reflected in the value of a home. As relayed in our testimony in regard to including an additional amount for energy improvements in interest rate reduction refinancing loans, we believe more program operating experience is needed in order to evaluate the impact of such improvements. We believe that there is a common concern in the lending, home energy, and real estate appraisal industries that the general real estate marketplace has not consistently, or uniformly, reacted to energy efficient features in a home. Consequently, there is insufficient market data to fully understand the value of energy efficiency in housing. As we have experienced no foreclosures under the current statutory authority, we do not know if energy efficiency improvement costs will be recoverable.

ATTACHMENT A



ATTACHMENT B—HOW WILL THE CARING PLACE AT LOYOLA, A RONALD MCDONALD HOUSE, BENEFIT THE VA?

1. The VA has already benefited greatly from the interactions we have had with various community leaders, the press, our affiliate, and the private citizens in the area. In all public fora when discussing the House, the VA has been given great accolade for the spirit of cooperation we have shown with this project. Further, many of these community leaders have now visited the Edward Hines, Jr. VA Hospital and have come away with a very positive feeling about the VA. This will go a long way in dispelling the negative press the Chicago area has seen in recent years.

2. There are no short-or long-term plans for the small area of land identified for the Ronald McDonald House on the southernmost end of the Edward Hines, Jr. VA Hospital campus. Any expansions would occur at the north end near the inpatient tower.

3. Since the VA doesn't plan to sell the land, VA will continue to have ownership of the property and will reap the public relations benefits for the duration of the long-term lease. The Ronald McDonald House will actually have a "Hines, Illinois" address which will be used on all correspondence and publicity regarding the House.

4. Having the Ronald McDonald House located near the Hines Extended Care Center and the Hines Day Care Center will offer the VA many opportunities for joint programs, especially utilizing the recently constructed Intergenerational Park.

5. Again, with health care reform in mind, Hines Hospital's close working relationship with the Pediatric Department at Loyola (one of the initial "founders" of the Ronald McDonald House" has already allowed them to begin preliminary discussions about possible sharing agreements in the future, should the Secretary of the Department of Veterans Affairs allow such agreements for women and children.

6. The current Ronald McDonald project will pave the way for a future home to be built on Hines property for family members of adult patients. The group now involved has expressed a strong interest in pursuing this as soon as the first House is completed.

7. The licensing agreement and future long-term lease will allow for one of the 16 bedrooms to be designated for a "VA User" (as defined by the Hines Hospital Director) who has a seriously ill child at Loyola. There would be no charge to that VA User.

8. An attractive, $3.5 million dollar home constructed on VA property, with appropriate landscaping and adequate parking, will certainly improve the appearance of that area of the campus. Literally hundreds of family members will eventually have an opportunity to use the House and will become familiar with Hines Hospital as a result of their stay. This positive exposure will continue to improve the image of the VA.

9. Such cooperation/collaboration with the private sector, the community, the medical school, and the university hospital can serve as a model for other VAMC's to follow in the future.

STATEMENT OF PAUL S. EGAN, EXECUTIVE DIRECTOR, VIETNAM VETERANS OF AMERICA

Mr. Chairman and members of the Committee, Vietnam Veterans of America (VVA) appreciates the opportunity to submit its views on each of the ten bills under consideration at today's hearing. Since this legislation spans a considerable spectrum of issues, we will discuss each as it is included under broad categories of veterans benefits, Department of Veterans Affairs (VA) home loan guaranty programs and veterans health care.

VETERANS BENEFITS

S.789

This bill would exclude New York State payments to blind disabled veterans from being counted as income in determining federal veterans pension payments. Its effect on the federal budget will be negligible, but its effect on the income of blind disabled veterans will matter to them. VVA supports this bill.

S.792

This bill sets the beginning of the Vietnam War for veterans benefits purposes at a more historically relevant date (December 22, 1961) and has the support of VVA.

S. 1904–S. 1908

Congress has rightly been concerned with addressing the adjudications nightmare of a growing backlog of hundreds of thousands of cases that have been appealed after claims were denied. The VA, operating out of two ancient institutional biases—that most claims are spurious and that judicial review creates needless work—has wasted the past year arguing for legislation that would grant it the power to deny these cases with impunity from appeal. The major VSOs have stood together in opposition to this assault, and have put forward a number of suggestions aimed at making the system work right. Bills S. 1904-S. 1908 embody much of the experience and practical wisdom of the VSO recommendations, and would, if enacted, reduce the backlog of appeals through enabling VA to resolve claims fairly rather than to bury them.

S.1904

The Chairman's bill aims at improving the organization and procedures of the Board of Veterans' Appeals. We believe it accomplishes that, and we endorse it. It allows the use of single member panels and provides safeguards in appeals from such panels. It allows the Board to correct obvious errors. It allows electronic hearings and a hearing docket. All of these are important reforms, and VVA supports the bill vigorously.

S.1905

This bill streamlines claims processing by accepting statements of the claimant as proof of relationship, by accepting private physician examination reports without requiring redundant confirmation by VA physicians, and by requiring the Secretary of Veterans Affairs to report to Congress on the status of an agreement with the Secretary of Defense to transfer to VA its medical records of individuals upon separation from active duty. These are three patently wise and needed steps that have waited too long already to be adopted into law. VVA urges quick enactment of this bill.

S.1906

S. 1906 is a simple and necessary bill that will prohibit bureaucratic misinterpretation of the Veterans" Dioxin and Radiation Exposure Compensation Standards Act. VA has a history of obstructing veterans' claims for disease or disability resulting from exposure to ionizing radiation or dioxin. VVA supports this bill.

S.1907

It is frightening to note that medical malpractice occurs so frequently in the VA health care services that laws have been enacted to treat such malpractice as service-connection. When a veteran goes to VA for help and ends up with a new disability, the claim arising from such malpractice must be adjudicated without VA obfuscating the claim, literally adding insult to injury. VVA strongly endorses this bill.

S.1908

This measure is designed to provide sound guidance in addressing a variety of problems in veterans claims adjudication procedures by mandating a study of the VA's practices in adjudicating claims. VVA participated in a host of hearings last year on this topic here and before the House Veterans Affairs Subcommittee on Compensation, Pension and Insurance, where we were one of several veterans service organizations (VSOs) to describe the administrative mess the VA faces in claims adjudication.

VVA has been calling for such a study for much of the past year in these hearings, and would be glad to take part in it. The terrifying backlog of cases at VA is the result of long-term mismanagement, and federal resources cannot solve it without such a study being conducted first. This bill recognizes that VA must not conduct the study, and that veterans service organizations must be consulted. We support S.1908.

S.1927

This bill ties without indexing COLA increases in VA disability compensation and DIC to increases to Social Security payments, rather than setting them at arbitrary rates. VVA supports it.

VA HOME LOAN GUARANTY PROGRAM

S. 1626

VVA supports the provisions of S. 1626, which aim to simplify and enhance the Veterans' Home Loan Program. The addition of loan guaranty authority for energy efficiency home improvements is a highly desirable provision.

More importantly we support the provisions of section 2, which allow a veteran who has paid his or her VA guaranteed home loan in full, to have additional loan guaranty entitlement without disposing of this property. This will permit VA to provide subsequent loan guaranties to veterans who are good risk borrowers because they possess the collateral of 100 percent equity in the original home. VVA commends you and your colleagues, Mr. Chairman, for this initiative that should have been done long ago to enhance the viability of the VA Home Loan Guaranty Program.

There remain some very real problems within the design of the program as a whole, however. VVA calls the Committee's attention to the problem of VA's foreclosure practices.

Over the course of the last several years VA home loan program managers have embraced a wrongheaded policy making little sense either from a domestic housing policy standpoint or from the standpoint of its own programmatic fiscal viability. The policy at issue is one in which foreclosure by lenders is encouraged as an option of first resort when veterans default on their home loan guaranteed mortgages. It has made little difference to the VA whether these veterans defaulted through no fault of their own and it has made even less difference to the VA whether these veterans might likely regain their economic footing.

Sadly, VA has been permitted the freedom to adopt this foreclosure first posture because its authority to refinance the mortgages of defaulting veterans is entirely discretionary. Other federal agencies operating housing programs might also have adopted VA's posture but for statutes applying to those other housing programs which mandate administrative rights to refinancing for individuals in default through no fault of their own. Absent the discretionary authority almost never exercised by VA, the Federal Housing Administration (FHA) of HUD and Farmers Home Administration (FmHA) of the Department of Agriculture have been forced to realize what the GAO has proven: a policy encouraging foreclosure costs the government much more than refinancing.

Last year VVA proposed specific legislative language designed to bring VA's home loan program into conformity with refinancing statutes applying to FHA and FmHA. These proposals were made in two separate House Committee hearings and one Senate

Committee hearing last year and we urge the Committee to carefully review and legislate these proposals.

HEALTH CARE

S.677

This bill has nothing to do with veterans. It provides for a single VAMC to rent its own space to provide family accommodations for families of children at a nearby non-VA hospital. VVA supports the bill as both a revenue enhancer and a way to introduce the VA to family care. However, language should be added to paragraph (b) CONDITIONS ensuring that the leasing of such space does not interfere with VA patient services.

Mr. Chairman, this concludes our testimony.

STATEMENT OF LARRY D. RHEA, DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS, NON COMMISSIONED OFFICERS ASSOCIATION

Mr. Chairman, the Non Commissioned Officers Association appreciates the opportunity to comment for the record on the multiple pieces of veterans legislation being considered today by the Senate Veterans Affairs Committee. The Association's comments address each bill under consideration today in numerical order.

S. 677

Introduced by Senator Paul Simon nearly one year ago, S. 677 would permit a Ronald McDonald House to be established on the grounds of the Veterans Affairs Hospital, Hines, Illinois. The intent is to provide accommodations for family members of severely ill children being treated at the adjacent Loyola University Medical Center and, as NCOA understands it, the facility would be operated on a not-for-profit basis at no expense to the Department of Veterans Affairs. As you are aware Mr. Chairman, several private and public entities have been jointly working on this worthy cause.

NCOA has no objections to S. 677 and believes that "The Caring Place at Loyola, Inc." would serve a needed and humane purpose. NCOA requests that the Committee consider, in return for the use of the VA property, that the facility also accommodate families of seriously ill veterans hospitalized at the Hines VA Medical Center. NCOA believes this is a reasonable request on the same compassionate basis that led to the introduction of the bill.

S. 789

NCOA supports the concept embodied in S. 789 and believes that State payments to all catastrophically disabled veterans should be treated in the same manner as blind, disabled veterans. Moreover, NCOA requests that the language of the bill that states "....blind *and* totally disabled veterans..." be amended to read "...blind *or* totally disabled veterans..." This change would permit inclusion of those totally disabled but not necessarily blind veterans to receive special consideration. Further, NCOA believes that all State payments made to catastrophically disabled veterans should be treated in a nationally standardized manner among all the States. Therefore, NCOA would urge the Committee to not isolate this legislation to New York State but rather apply the legislation on a nationwide, equitable basis.

S. 792

Mr. Chairman, NCOA defers from taking a position on S. 792 that would change the beginning date of the Vietnam era for veterans benefits purposes. While the intent of S. 792 is worthy, as substantiated by historical data, NCOA is concerned that significant, unknown costs would be incurred if the bill is enacted. Until the full impact of this bill can be assessed, NCOA believes it is premature to endorse the legislation.

NCOA estimates that a change from August 5, 1964, to December 21, 1961, would bestow wartime veterans benefits to approximately 3 million veterans when perhaps fewer than 10,000 actually served in the Southeast Asia theater. A service member's potential for service in Vietnam prior to August 5, 1964, was relatively small, probably in the neighborhood of 1 in 10,000. Conversely, the potential for Vietnam service among active forces after August 5, 1964, was anywhere between 50 to 80 percent depending on military specialty and service component. The pay-go cost associated with

an additional 3 million wartime veterans, when only a very small percentage of that number faced the wartime risk of going in harms way, would be significant.

NCOA believes that a more reasoned approach would be to recognize the service and sacrifice of those who actually served in Vietnam and contingent waters prior to August 5, 1964. NCOA suggests to the Committee that rather than redefine and change the dates currently established for the Vietnam War era that the apparent intent of S. 792 could be achieved by merely redefining Vietnam veterans for veterans benefits purposes.

Therefore, NCOA suggests, in lieu of the sweeping change proposed in S. 792, that the Committee consider redefining Vietnam veteran by extending wartime service recognition and associated veterans benefits to anyone who served in Vietnam or contiguous waters prior to August 5, 1964. NCOA believes that those who qualified for the Armed Forces Expeditionary Medal or the Navy and Marine Corps Expeditionary Medal for Vietnam service from July 1, 1958, until August 5, 1964, should be the recognized for their Vietnam service for purposes of veterans benefits in addition to those currently recognized (August 5, 1964 to May 7, 1975).

S. 1626

NCOA wholeheartedly endorsed S. 1626 immediately after it was introduced by the distinguished Chairman on November 4, 1993. The Association restates that strong support today. Both of the provisions contained in S. 1626 make eminent good sense for veterans, the home loan guaranty program, and the Nation.

NCOA has strongly advocated the full restoration of loan guaranty entitlement when the obligation to VA has been fulfilled and VA has no further liability. In this regard, S. 1626 clearly recognizes that the personal situation and residence requirements of a veteran can and do change. The second provision of S. 1626 to allow energy efficient home improvements through refinancing savings recognizes and supports national energy consumption, conservation and environmental goals.

S. 1904

NCOA's first comment relative to S. 1904 is to express appreciation to the Chairman for introducing this legislation. NCOA believes that the fundamental provisions of S. 1904 are needed and would help address the nearly insurmountable crisis currently confronting the Board of Veterans' Appeals (BVA). At the same time, NCOA would caution that this legislation alone will not be an immediate cure all for the current crisis. There are no simple, quick fixes to the current problem. Nonetheless, NCOA views S. 1904 as necessary to allow the Board to begin what will be a slow process of recovery. NCOA supports this legislation.

In supporting S. 1904, NCOA wants to restate one overriding concern in clear, concise language-the due process rights of veterans and fairness cannot be sacrificed for the sake of administrative expediency. In this regard, NCOA would urge the Chairman to remain vigilant regarding any changes to the organization or procedures of the BVA to ensure that the fundamental notion of fairness and the right to full and complete due process is preserved.

S. 1905

NCOA enthusiastically supports the changes recommended in S. 1905 to improve VA claims procedures. It is noted that these changes have been widely discussed previously and are contained in the recommendations of the DVA's blue ribbon panel.

As with S. 1904 pertaining to the BVA, S. 1905 will not be an immediate cure all for claims processing and adjudication. Are the administrative changes contained in S. 1905 needed? Most certainly they are. But as NCOA has pointed out on many previous occasions, there is an inescapable connection between quality and timeliness of decisions and sufficient, qualified people to do the work. Unless the FY95 budget and future VA budgets provide funding sufficient to meet minimum full-time employee requirements, S. 1905 will, in all likelihood, have only marginal impact.

S. 1906

S. 1906 would restore a right granted by Congress many years ago and which was taken away by the Court of Veterans Appeals [Combee v. Principi, 4 Vet. App. 78 (1993)]. NCOA supports this legislation. As the distinguished Chairman pointed out when introducing this legislation, the bill would permit veterans suffering from ionizing radiation related disabilities the right to establish their claims based on the

theory of direct service connection, should they so choose. This is the same right enjoyed by other veterans seeking to establish disabilities as service-connected.

S. 1907

S. 1907 would require VA to adjudicate veterans medical malpractice claims filed under 38 U.S.C. 1151, the procedures of which have been suspended pending DVA appeal to the Supreme Court. NCOA fully supports this bill and its intent to ensure malpractice claims are processed by DVA.

S. 1908

Of the five bills introduced by the Chairman pertaining to the adjudication system, S. 1908 is, in NCOA's opinion, the only bill of questionable merit. NCOA is concerned that $150,000 will be spent to obtain results that will merely mirror already widely documented procedures and problems.

Assuming that S. 1904, S. 1905, S. 1906, and S. 1907, or very similar legislation will be enacted, NCOA believes that the Committee's oversight responsibilities could be better served by monitoring the impact of these legislative initiatives and the implementation of the actions of the Secretary's blue ribbon panel. NCOA also notes that the BVA has initiated a review of the Board's procedures by an outside, impartial panel called the Focus Group. Thus, NCOA believes that no substantial insight could be gained from a two-year study of an area that has and is continuing to receive considerable attention.

S. 1927

S. 1927 would increase, effective December 1, 1994, the rates of VA disability compensation and dependency and indemnity compensation for the survivors of certain service-disabled veterans. The 3% increase would be the same percentage as the cost-of-living adjustment for Social Security benefits. NCOA supports the cost-of-living adjustment provided in S. 1927 for compensation beneficiaries.

CONCLUSION

NCOA is generally quite pleased with the legislation being considered today. The Association expresses appreciation to the Chairman for his personal efforts on behalf of veterans and for consideration of this statement.

Thank you.

STATEMENT OF GARY J. EDLES, GENERAL COUNSEL, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Mr. Chairman and members of the Committee, I am pleased to submit this statement in support of S. 1908, a bill that provides for a study of the Department of Veterans Affairs (DVA) adjudication system by the Administrative Conference of the United States (ACUS).

As you know, the Administrative Conference is the government's permanent advisory body on the "efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out administrative programs. . . ." 5 U.S.C. §594(1). S. 1908's mandated study of the DVA's claims adjudication process would clearly involve just the sort of inquiry that our statute contemplates—and we are, of course, gratified that you, Mr. Chairman, and your co-sponsors, have indicated your confidence in our ability to provide the assistance you are seeking.

Before turning to the specific provisions of S. 1908, which appear to be well drafted, it might help the Committee to have some background on the Administrative Conference's program of research and recommendations.

ACUS consists of 101 members including a full-time Presidentially appointed, Senate-confirmed Chairman; a 10-member Council, appointed by the President but without Senate confirmation; about 50 members selected by each of the most significant agencies and departments; and about 40 members of the public, selected by our Chairman. The Department of Veterans' Affairs is a Conference member. Pending nomination and confirmation of a Chairman appointed by President Clinton, our Acting Chairman is Vice-Chairman (and Council Member) Sally Katzen who is the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. The Office of the Chairman has a small staff, including myself, that serves the Conference and administers its programs.

The Conference's research agenda is developed from many sources: legislation, agency requests, member suggestions, outside suggestions and staff generated ideas. The Chairman and Research Director develop project ideas for presentation to the Council. Council-approved research topics may then be initiated by the Chairman when both funds and research consultants are available. Most of the Conference's research is conducted by expert consultants or teams of consultants, usually drawn from the academic community. The Conference's Research Director and his staff attorneys oversee and assist in the completion of research.

Once the research has been turned into a draft report, the findings are normally placed before one of the six standing committees made up of ACUS members. The committee deliberates in public and may develop a recommendation addressed to Congress, the President, one or more agencies, or the courts. If it does so, the full Conference then considers the matter in plenary session and may adopt a formal recommendation. Since 1968 ACUS has adopted over 180 such recommendations, many of which have led to legislative or regulatory reform.

Several of these studies have been mandated by Congress. For example, in 1974 in the Magnuson-Moss Warranty FTC Improvements Act, Congress mandated an ACUS study of the trade regulation rulemaking procedures created by the Act. See Public Law 93-637, §202(d). This study led to a series of recommendations. Similarly, in 1990, Congress requested a study of the FAA civil money penalty program. See Public Law 101–370. Even more frequently, agencies with special problems may request a study and offer to fund the undertaking through an interagency transfer under the Economy in Government Act.

With respect to veterans benefits claims adjudication, ACUS has been following with interest the developments after passage of the Veterans' Judicial Review Act of 1988. Our Chairman testified about the rulemaking and adjudication provisions of the pending bills in 1988 and we have observed some of the transitional problems caused by the new system. Our recent overview of the Federal Administrative Judiciary briefly described the operations on the Board of Veterans' Appeals and the other adjudicators at the Department. Moreover, our numerous studies of the social security disability adjudication process have included some examination of the somewhat (but only somewhat) analogous DVA process.

This general interest on our part and our knowledge about transitional problems have led us to be interested in undertaking a study of this process, once enough time had passed to allow collection of meaningful data. In fact, after some preliminary indications of interest by the Department of Veterans Affairs in such a study, our Chairman obtained provisional approval from our Council to undertake such a study, if such a request were forthcoming. That is why we are especially pleased that S. 1908 has been introduced.

As for the specific provisions of S. 1908, Mr. Chairman, we believe them to be quite well thought out. We have reviewed the bill's key provisions regarding the study's scope, its time limits, its funding, its consultation requirements, and the need for cooperation by the Department. In each of these particulars, the bill provides appropriate guidelines and parameters.

Scope. We believe that the description of the contents of the proposed study is broad enough to encompass all important aspects of the adjudicative process—from application through the DVA's review, including the effects of the new judicial review system. By the same token, we feel that the bill properly limits the study to matters of procedure and organization—without, for example, requiring an examination of the substantive criteria used in awarding or denying benefits.

Time limits. S. 1908 requires that ACUS submit a preliminary report on the study containing preliminary findings and conclusions within one year of enactment and a final report with recommendations 18 months after enactment. We believe these time limits are tight for a study of this magnitude, but realistic. We appreciate the sponsors' understanding that it requires extra time to produce official Conference recommendations.

Funding. The bill authorizes $150,000 for the study to be appropriated to the DVA for transfer to ACUS under the Economy Act (31 U.S.C. §1535). We think the amount is sufficient and in line with other major studies recently undertaken by ACUS. ACUS could not undertake a study of this magnitude with its current or even projected appropriations so we thank the sponsors for authorizing the necessary funds. We also believe the bill's approach of authorizing the funds to DVA for transfer to ACUS is especially helpful—in that it makes the funding schedule more predictable. This was

the approach ultimately taken in our recent study of the FAA civil penalty program (the funds were transferred from DOT) and it worked well.

Consultation requirements. We believe it is quite proper for extensive consultations to take place during this study with appropriate veterans service organizations and others who represent veterans before the DVA. We would plan to do this anyway, but we assuredly have no objection to including that admonition in the bill.

Cooperation by DVA. Obviously, this study will require the collection of a lot of data and other information about the adjudication process and its recent history. We are confident that our DVA member would assist us in this regard. Nevertheless, the specification of the information to be provided and the deadlines can only be regarded by us as helpful. We, of course, would defer to the Department on whether the direction may appear to be too onerous from its standpoint.

In sum, Mr. Chairman, we are pleased at the prospect of this assignment. We believe that such a study will not only help provide needed information and recommendations to Congress and the DVA, it will have direct benefit to our deserving veterans. It may even have some larger payoffs with respect to a more coherent procedural approach to benefit claims adjudication in a variety of programs across the government.

Please let us know if you need any more information or if you have any questions.

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